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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~1459.~~ ~~900~~ ~~538~~ 284

THE SLIDE AND SPUR GOLD MINES (LIMITED), APPELLANT,

vs.

ELLEN R. SEYMOUR AND WILLIAM G. PELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 17, 1890.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 16th day of February, A. D. 1889, came Ellen R. Seymour and William G. Pell, by Messrs. Teller & Orahood, their solicitors, and filed in said court their bill of complaint and sued out of and under the seal of said court a subpœna in chancery against the Slide and Spur Gold Mines (Limited); and the said bill is in words and figures as follows, to wit:

Bill of Complaint.

In the Circuit Court of the United States, District of Colorado.

Ellen R. Seymour and William G. Pell, citizens of the State of Colorado, residing in the city of Denver, in said State, bring this their bill against the Slide and Spur Gold Mines (Limited), a corporation formed, organized, and existing under the laws of Great Britain.

And thereupon your orators complain and say that heretofore, to wit, in the month of August, A. D. 1886, and prior thereto, your orators were the owners and in possession of certain mining property and real estate situated in Gold Hill mining district, Boulder county, State of Colorado, which said property was and is known as the "Slide and Spur lodes;" that the said Slide lode and lode claim was of the length of 1,500 feet by 150 feet in breadth; that the said Spur lode was of the length of 1,300 feet and of the breadth of 150 feet, which said lodes cross each other at nearly right angles, said

2 property being more fully described as follows, to wit:

"All that piece or parcel described in and by a patent from the Government of the United States as the Slide lode, and recorded in the office of the clerk and recorder of Boulder county, Colorado, in Book 59, page 96; also the Spur lode, crossing the said Slide lode, and known in the United States land office at Central City, Colorado, on the 25th day of August, 1886, as mineral entry No. 2322 and lot No. 335."

Your orators further show that the said Slide and Spur lodes above described were then and still are valuable for mining purposes, and that, being so possessed of said property, your said orators, on or about the 9th day of October, A. D. 1886, gave unto one W. F. Bruff, of the city of New York, an option for the purchase of said property, your orators agreeing with the said Bruff that if he would pay to your orators the sum of seven hundred and fifty thousand (750,000) dollars within certain times therein specified your orators would thereupon deed to him or to his assigns the whole of the said property above described as the Spur and Slide lodes upon the payment to your orators of said sum of seven hundred and fifty thousand (750,00–) dollars in cash within a time stated to said Bruff.

That afterwards and on or about the 19th day of October, A. D. 1886, the said Bruff opened negotiations with one John Haldeman, a citizen of Great Britain and a resident of the city of London; and,

the said Bruff having failed to make the payments as was stated in the said option, the said Haldeman applied to your orators for an extension of the time for the payment of the money for the said Spur and Slide lodes, and proposed himself to become the immediate purchaser thereof; and thereupon your orators caused to be made a proposition in writing to the said John Haldeman respecting the purchase of the said Spur and Slide lodes and the times at which said purchase-money should be paid in case he concluded and agreed to purchase the same; and thereupon they executed, under the
3 name and signature of I. F. Seymour and A. B. Davis, who were then acting in the interest of and as the agents of your orators, an instrument in writing in words and figures following, to wit:

"DEAR SIR: I agree that in case you cannot raise the required sum *sum* within the specified time in your contract dated about the 9th day of October, between W. F. Bruff, acting under our authority, and yourself, to change the conditions as follows, viz: To sell you the Slide mine for $750,000; 25 (M) thousand dollars to be paid one week after the receipt in London of Foster's report, this to be the first payment on the property, the balance of the purchase price, $725,000, to be paid within two months from the date of the payment of $25 M; one ½ in cash and one-half in fully paid common shares of the company to be formed. In case the second and last payment is not made when due the agreement cancels itself and the $25 M is forfeited. No ore to be taken from the mine after first payment. I further agree to give you a call at par for two months from date of issue upon the shares received as part payment for the property.

"(Signed) I. F. SEYMOUR.
"A. B. DAVIS."

Which said instrument was made and executed on the 19th day of October, A. D. 1886.

And your orators further show that at the time of the execution of said proposition above set forth it was understood and agreed by and between your orators and the said John Haldeman that the said John Haldeman should proceed to procure the incorporation of a company under the laws of Great Britain, to be located in the city of London, which said company should be organized for the purpose of purchasing said property of the said Haldeman of your orators, and for the purpose of working the said lode property, and for the organization, when the title thereof should be obtained, by the said company so to be formed as aforesaid.

Your orators further show that in accordance with the terms of said agreement last above mentioned the said John Haldeman did proceed to organize a mining company under the laws of
4 Great Britain entitled "The company's acts, 1862 to 1883," and did thereupon complete the organization of said company under the said laws of Great Britain, so that the same became and ever since has been and now is an incorporated company, having the right to acquire title to real estate in the State of Colorado and

to mine and work mining property so acquired by it; that the objects for which said company was formed, as stated in the articles under which the same was incorporated, were as follows, to wit: "(*a*) to adopt or carry into effect, either with or without modifications, as may be agreed, an agreement, dated the 16th of May, 1887, made between John Haldeman, of the one part, and Harry Edward Gilbert, for and on behalf of the company, of the other part, or to enter into a fresh agreement upon similar terms, subject to such modifications, if any, as the directors may approve; (*b*) to purchase, take, or lease, or exchange, hire, or otherwise acquire any mines, minerals, mining rights, lands, buildings, machinery, easements, privileges, patents and patent rights, or other property, real or personal, and in particular the Slide and Spur mines in the Gold Hill mining district, Boulder county, Colorado, in the United States of America; (*c*) to manage, cultivate, improve, and develop said mines and other property, whether belonging to the company or not, and to prepare for sale, render marketable, work up, and manufacture the produce thereof in any way they may think fit; to work the mines and mining rights of the company, and to crush, wash, smelt, reduce, and amalgamate the ores, and to render the same marketable;" also (*j*) "to sell, lease, exchange, or otherwise dispose of the property of the company, in whole or in part, and to contract for the development and working of any parts or part thereof by separate companies, partnerships, or persons, and to aid in the formation of such companies or partnerships for such consideration by payment in cash, shares, debentures, or otherwise as may be considered expedient; (*m*) to acquire a foreign domicile and to do all such other things as are incidental or conducive to the attainment of the above objects or any of them."

Your orators further say that, in addition to the above objects set forth herein, there were also several other objects in said act of incorporation stated which it is not necessary should be set up herein.

Your orators further show that the capital of said company so formed as aforesaid was in the said act of incorporation stated as follows:

"The capital of the company is 400,000 pounds, divided into four hundred thousand shares of 1 pound each, the whole or any portion of which and any future capital of the company may be issued as full or partly paid shares and at a discount or premium and with the benefit of any preference or priority in the distribution of assets or payment of dividends, and with power also to increase or decrease such capital stock and to issue any part or parts of the increased or decreased capital as consolidated stock or any shares at such times, in such manner, and on such terms as the company shall determine."

That said company was organized and its organization fully completed some time prior to the 24th day of May, A. D. 1887.

Your orators further show that upon the organization of said company it immediately issued its prospectus, elected its board of directors and managers, and immediately commenced to negotiate and do business with the said Haldeman with respect to the purchase of said

property above described, to wit, the Spur and Slide lodes; that the said Haldeman, at the time of the making of said agreement and on the acceptance of the option, October 19th, A. D. 1886, was acting in contemplation of the formation of said company and for the sole purpose of procuring the said lode property above described as the property of the said company so to be formed and which was afterwards formed as aforesaid, to wit, the said Slide and Spur Gold Mines (Limited); which said corporation your orators pray may be made a party defendant hereto.

Your orators further show that the said John Haldeman did not comply with the terms and conditions of said contract of October 19th, A. D. 1886, but that he did pay unto your orators the sum of twenty-four thousand two hundred and fifty (24,250) dollars; which said sum was received by your orators from the said Haldeman on the said contract and in part performance of the same on the 26th day of January, A. D. 1887; that on the 8th day of March, A. D. 1887, the said John Haldeman paid to your orators upon said contract and in part performance thereof the further sum of thirteen thousand three hundred and ninety-two (13,392) dollars; that on the 22nd day of March, A. D. 1887, the said Haldeman paid
6 to your orators upon said contract and in part performance thereof the further sum of six thousand three hundred and eleven and $\frac{50}{100}$ (6,311.50) dollars, and also on the 6th day of July, A. D. 1887, the said Haldeman paid to your orators upon said contract and in part performance thereof the sum of fourteen thousand four hundred and ninety (14,490) dollars.

Your orators further show that on about the 18th day of August, A. D. 1887, the said John Haldeman, having failed to make the payments mentioned in his agreement as above set forth except as above stated, and being unable to make them in accordance with the terms of his agreement, entered into an agreement in words and figures following, to wit:

"Memorandum of agreement made this eighteenth day of August, 1887, between John Haldeman, of 38 Old Jewry, in the city of London, and J. Fenton Seymour, of Denver, Colorado, in the United States of America, acting for himself and partners, the owners of the Slide and Spur Gold Mines, situate in Boulder county, Colorado, United States of America:

The said John Haldeman agrees to pay forthwith the sum of ten thousand pounds sterling in addition to twelve thousand five hundred pounds already paid on account of the purchase-money of the said mines, such sum of ten thousand pounds to be paid through Messrs. Wells, Fargo & Co. (who now hold the deeds of the said property in escrow) and to be held by them and paid over to the said J. Fenton Seymour upon the titles of the said mines being registered in the name of the 'Slide and Spur Gold Mines,' Limited, free from all charges and incumbrances; and the said J. Fenton Seymour hereby undertakes and agrees to register the titles as above upon the said ten thousand pounds being deposited with Messrs. Wells, Fargo & Co.

The said J. Fenton Seymour hereby undertakes and agrees to have the 'Slide mine' worked to its full capacity, and after the due and legal registration of the title to the said company he further agrees that the returns from the said mine shall be cabled weekly to the said company in the form of cables sent herewith, it being understood and agreed that the money value of the first weekly returns so cabled shall not be less than the sum of two hundred pounds sterling, and that each successive weekly return shall show a moderate increase over that sum.

The said J. Fenton Seymour hereby undertakes and agrees to take the control of the management of the said property until the payments hereinafter mentioned are completed, and it is understood and agreed that he shall retain such control until the said payments are completed. The said John Haldeman agrees that three hundred and seventy-five thousand shares of one pound each in the above company shall be transferred to Mr. Clarence Preston Elder as trustee and deposited with Messrs. Wells, Fargo & Co. in London, to the intent that the said shares shall be held as security for the due
7 performance of the following conditions, viz:

1st. The payment of ten thousand pounds, in addition to the above-mentioned twenty-two thousand (J. F. S.) five hundred pounds, within three days (J. F. S.) after the receipt of the third successive weekly return from the mine, as hereinbefore mentioned; and,

2nd. The balance of forty-five thousand pounds at the expiration of ten days after the receipt of eight successive weekly returns of the nature and value above specified. Upon the completion of the above-mentioned payments the said J. Fenton Seymour hereby undertakes and agrees to release the above-mentioned three hundred and seventy-five thousand shares, less seventy-seven thousand five hundred, to which he is entitled, and also less the number of shares sold with the consent and under the supervision of the aforesaid Clarence Preston Elder, acting for the said J. Fenton Seymour.

In case the weekly returns cabled from the mine shall from any cause fall below the sum of two hundred pounds sterling per week, then, in that case, such returns shall not count, but the time for paying the second ten thousand pounds and the balance of forty-five thousand pounds shall be extended *pro rata;* but should the successive weekly returns amount to two hundred pounds sterling per week (J. F. S.), with a moderate increase weekly, as hereinbefore mentioned, and the said John Haldeman shall make default in the payment of the balance of forty-five thousand pounds, then, in that case, the said J. Fenton Seymour shall have the right to forfeit the amounts already paid and to claim the above-mentioned three hundred and seventy-five thousand shares.

As witness the hands of the said parties the day and date first above written.

(Signed) J. FENTON SEYMOUR.
JNO. HALDEMAN."

The following endorsements appear upon the back of said agreement: "Agreement. John Haldeman & J. Fenton Seymour.

STATE OF COLORADO, } ss:
County of Boulder, }

I hereby certify that this instrument was filed for record in my office this 18 day of Dec., A. D. 188–, at 10.10 o'clock a. m., and is duly recorded in Book 121, on page 139.

JAMES COWIE, *Recorder,*
By —— ——, *Deputy.*

No. 3115. Fees, $1.75."

Your orators further show that in making said contract the said J. Fenton Seymour was acting for and on behalf of your orators by virtue of a power of attorney to him made and delivered for that purpose; that upon the execution of the said contract by the
8 said J. Fenton Seymour and the said John Haldeman your orators ratified and approved the same, and from that time thenceforward held themselves bound and obliged to comply with the terms of said contract so far as there was anything provided to be done on the part of the owners of said property; that at said date the said Slide and Spur Gold Mines (Limited) had been incorporated and had commenced to do business by the issuance of shares, and that all the acts and doings of the said John Haldeman were then known to the said defendant, The Slide and Spur Gold Mines (Limited) Company, and that said contract was made in their behalf and with the assent and consent of the said board of directors of said defendant and for its benefit as well as for the benefit of the said John Haldeman; that afterwards, in the performance of said contract, the said defendant and the said John Haldeman paid to your orators upon said last-mentioned contract the sum of forty-five thousand eight hundred and eighty-five (45,885) dollars, and that upon the 24th day of September, 1887, the said defendant company and the said John Haldeman paid to your orators the sum of two thousand four hundred and fifteen (2,415) dollars, which said sum was paid in part performance of the said last-mentioned contract; that on the 5th day of October, A. D. 1888, the said defendants, The Slide and Spur Gold Mines (Limited) Company, and the said John Haldeman having failed to make payments as in said contract last above mentioned specified and being unable to fully complete the terms of said contract, the said contract last above mentioned was modified as follows, to wit:

Your said orators, acting through their said agent, J. Fenton Seymour, made the following proposition to said Haldeman and the said defendant company as a modification of the said last above mentioned contract, to wit:

9 "1st. In payment of 3,500 pounds to Wells, Fargo & Co. we agree to start the mine at work in name of Co., said sum to cr. of Col. Seymour.

"2d. Company to send cashier and engineer (if they think fit) & Col. Seymour to be resident manager and director for the period of one year.

"3d. All proceeds to be transmitted to company bankers.

"4th. Mr. Elder to deliver 75,000 shares to the Scotch subscribers and 45,000 to Mr. Rust on payment of said sum.

"5th. The balance of shares to remain in Mr. Elder's hands as trustee until a final settlement can be made, inside of three months after acceptance of this proposition.

"6th. Col. Wilson, or whoever pays the £3,500, to receive 15,000 shares from Mr. Elder on the final settlement (not later than three months), and meantime receive a legal obligation from Mr. Elder as trustee.

"7th. On resignation of Mr. Elder as a director, Mr. Allen to be elected.

"8th. £3,500 to be paid so soon as the company can register the transfer of the 75,000 shares.

"(Signed) J. F. SEYMOUR."

Your orators further show that said proposition so made was received and accepted by the said defendant company and the said John Haldeman; that the said 3,500 pounds so mentioned in said proposition was paid to your orators on the 15th day of December, 1888, and due credit therefor given to said defendants on their said contract in the sum of seventeen thousand and forty-five (17,045) dollars; and your orators further show that thereupon, upon the request of the said Haldeman and the said defendant company, your orators caused to be delivered to said defendants a deed to the said property, conveying the property therein described, to wit, the Slide and Spur lodes, to the said Slide and Spur Gold Mines (Limited) Company, defendant; that such transfer and delivery was made without any agreement or understanding whatever that the said purchase-money or the price of said property was to be in any manner reduced, changed, or altered by the said proposition last mentioned or by any contract or agreement or by reason of the delivery of the deed, but that it was then and there understood and agreed that the said purchase-money, to wit, the balance remaining unpaid of the purchase price hereinabove stated, should be due and payable and should be paid within a short time and as nearly in accordance with the agreement with the said John Haldeman and the said Slide and Spur Gold Mines (Limited) Company as was possible.

Your orators further show that, in pursuance of said proposition last above mentioned, the said J. Fenton Seymour did assume the duties of a resident manager of said lode mining property and did proceed to work said mines for the said defendant company and in the interests of the said defendant company, and that the said defendant, The Slide and Spur Gold Mines (Limited) Company, has ever since been and is now in the sole and exclusive possession of said lodes.

Your orators further show that throughout all these transactions, to wit, from the time when negotiations were first entered into for the sale of said property, in the month of October, A. D. 1886, up until this time, your orators have been expending money upon said

lode property in the development thereof and in working said property; that such work has always been with the knowledge, assent, and consent of the said parties engaged in negotiating the purchase of said property, and with the understanding and agreement on their part that whatever moneys should be expended by your orators over and above the ores taken out of said property should be reimbursed to them and paid by the parties purchasing the said property; that the said John Haldeman and the said defendant company during all the time these negotiations were going on, especially after the agreement between the said John Haldeman and your orators that a company should be formed, as above stated, have been aware that such developments and expenditures were being made by your orators in respect to said property, and that by the agreement with the said Haldeman & the said def't company it was agreed that
11 the said company, when it should become the owner of said property, should be held liable to pay & would pay and reimburse your orators for said above-mentioned expenses; that in carrying on such work during the years 1886 and 1887 and up to the 15th day of December, A. D. 1888, when the said property was turned over and delivered to the said defendant company, your orators had expended for development and work as aforesaid the sum of twenty-nine thousand four hundred and fifty-three and $\frac{39}{100}$ (29,453.39) dollars, and had received from the proceeds of ore smelted and sold as the product of said lodes the sum of thirteen thousand one hundred and three and $\frac{3}{100}$ (13,103.03) dollars, and that there is still due your orators from the said defendant company for and on account of said work and expenditures the sum of sixteen thousand three hundred and fifty and $\frac{36}{100}$ (16,350.36) dollars.

Your orators further show that said J. Fenton Seymour, in said contract of August 18th, A. D. 1887, did do and perform in his own name and for and on behalf of your orators each and every thing required of him by said contract, and did take charge of said mining property, and did work the same, and did make the weekly returns of the character and in the manner in said contract specified, and your orators and the said J. Fenton Seymour have at all times done and performed each and every act specified in said contract to be done or performed by your orators or either of them or by the said J. Fenton Seymour; but the said defendant company and the said Haldeman have each failed and neglected to comply with the terms of said contract, and have wholly failed and refused to pay any of the sums so mentioned in the said contract to be paid by the said Haldeman except the sum of seventeen thousand and forty-five (17,045) dollars, as above stated.

Your orators further show that by reason of the premises the whole amount of the purchase price of said property, to wit, the sum
12 of seven hundred and fifty thousand (750,000) dollars, less the amount paid thereon, amounting to the sum of one hundred and twenty-three thousand seven hundred and eighty-eight and $\frac{50}{100}$ (123,788.50) dollars, which said sum, together with the amount in excess of the expenditures made by your orators upon said property,

as hereinbefore stated, is still due from the said defendant company and the said John Haldeman and remains wholly unpaid.

Your orators further show that they took no security by mortgage or otherwise for the payment of said sums so due to them, and have no security at this time, or any contract relating to the same, except as above specified and set forth; that no person, to the knowledge of your orators, has any claim or lien upon said Slide and Spur lodes, or any portion thereof, except the claim and lien of your orators for said purchase-money and for the expenditures made by them upon said property in accordance with the agreement made with the said defendant company as above set forth.

Your orators therefore ask the aid of this honorable court in the premises, and that the above-named John Haldeman and the said Slide and Spur Gold Mines (Limited), defendants in this suit, may be made parties defendant hereto; that summons may issue out of and under the seal of this honorable court in accordance with the practice of said court, and that the said defendants may each of them be ordered to appear, at a time to be therein stated, and answer this your orators' bill of complaint according to the rules and practice of this court, without oath, their answers and each of them on oath being hereby waived; that they may be required to full, true, and perfect answers make, to the best of their knowledge, information, and belief, as to all of the allegations in this your orators' bill of complaint contained and set forth; that an accounting may be had between your said orators and said defendants of
13 the amount due your orators on account of the purchase-money for said property, together with the amount of money expended by them or either of them for and on account of said property, and of the amount due your orators on account of the premises aforesaid; and, upon a final hearing, that a decree may be entered in favor of your orators against said defendants for the amount so found due your orators, together with interest thereon from the date of the filing of this complaint, and that your orators may by this honorable court be decreed to have a lien upon said Slide and Spur lodes for the full amount of all sums that may be found due on account of the purchase price of said property, and also on account of moneys expended by your orators in the development of the same; that said decree may provide for the sale of said premises for the payment of the amount due your orators for principal and interest due upon said contract and the expenditures aforesaid, and for the costs of this suit, and that the said defendants, and all persons claiming under them subsequent to the commencement of this suit, and all other persons, not parties to this suit, who may have or claim to have any liens of any kind upon said premises subsequent to the date of the filing of this complaint, either as purchasers, incumbrances, or otherwise, may be barred and foreclosed of all equity of redemption in the said premises, and that your orators may have such other or further relief as the nature of the

case may require and as to the court may seem proper and agreeable to equity.

TELLER & ORAHOOD,
Solicitors for Comp'ts.

(Indorsed:) 2392. U. S. C. C. 2392. Ellen R. Seymour and William G. Pell *vs.* The Slide and Spur Gold Mines (Limited). Bill of complaint. Filed Feb. 16, 1889. William A. Willard, clerk. Teller & Orahood, solicitors for complainants.

14 And the said subpœna and marshal's return *is* in words and figures as follows, to wit:

Subpœna.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States of America to John Haldeman and The Slide and Spur Gold Mines, Limited, Greeting:

You and every of you are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in April next (it being the first day of April, A. D. 1889), to answer the bill of complaint of Ellen R. Seymour and William G. Pell, this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and
[SEAL.] the seal of the said circuit court, at the city of Denver aforesaid, this 16th day of February, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Inde-
15 pendence of the United States the 113th year.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Memorandum.

The above-named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable the complainant's bill be taken against them as confessed and a decree entered accordingly.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA, }
District of Colorado, } ss:

DENVER, *March 5th*, 1889.

I have duly executed the within writ by delivering to Clarence P. Elder, a director and stockholder in said defendant company (no president, vice-president, secretary, treasurer, superintendent, general manager, or other officer of said company being found in my district), the said Clarence P. Elder being the authorized agent in this district upon whom service is to be made by virtue of a certificate of authorization on file in the office of the secretary of state of Colo., personally, a true copy of the within writ, at the place and time as follows, to wit, on the 23rd day of Feb'y, A. D. 1889, at Denver, in Arapahoe county. As to John Haldeman, he is not found in my district.

This writ therefore returned partly executed, as the law directs, this 5th day of March, A. D. 1889.

ZEPH. T. HILL, *Marshal,*
By E. C. CURRIER,
Deputy Marshal.

16 Marshal's fees:

Service, 1 person, at $2.00 each	$2 00
Mileage, 1 mile, at 6c., going only	06
Total	$2 06

(Indorsed:) Gen. No., 2392. Circuit court of the United States for the district of Colorado. In chancery. Ellen R. Seymour *et al. vs.* The Slide & Spur Gold Mines. Subpœna. Returnable to rule day, first Monday in April, A. D. 1889. William A. Willard, clerk. Filed this 5th day of March, A. D. 1889. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Teller & Orahood, of Denver, compl't's sol'rs.

And afterwards and on, to wit, the 6th day of May, A. D. 1889, came the said defendant, The Slide and Spur Gold Mines, Limited, by L. S. Dixon, its solicitor, and filed in said court and in said cause its answer to the bill of complaint heretofore filed herein; and the said answer is in words and figures as follows, to wit:

Answer.

Answer of the Slide and Spur Gold Mines, Limited, a corporation formed, organized, and existing under the laws of Great Britain, one of the defendants, to the bill of complaint of Ellen R. Seymour and William G. Pell, complainants.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and

imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant, answering, saith that it is
17 informed and believes that the said complainants were in the month of August, 1886, and prior thereto the owners and in possession of the mining property and real estate situate in Gold Hill mining district, Boulder county, State of Colorado, known as the Slide and Spur lodes, as in the said bill of complaint stated.

And this defendant, further answering, saith that it is a stranger to the agreement alleged in said bill of complaint to have been made between the complainants and one W. F. Bruff on or about the 9th of October, 1886, and that it does not know and cannot set forth, as to its belief or otherwise, whether any such agreement was entered into between the said complainants and the said Bruff, nor whether on or about the 19th of October, 1886, the said W. F. Bruff opened negotiations with the defendant John Haldeman; nor whether, the said W. F. Bruff having failed to make the payment, the said John Haldeman applied to the complainants for an extension of the time for the payment of the money for the said Slide and Spur lodes and proposed himself to become the immediate purchaser thereof, but this defendant believes the latter allegation to be true as stated in said bill; nor whether the complainants caused to be made a proposition in writing to the said defendant, John Haldeman, respecting the purchase of the said Slide and Spur lodes and the times at which said purchase-money should be paid in case he concluded to purchase the same; nor whether the complainants executed under the names and signatures of J. F. Seymour and A. B. Davis, as their agents, an instrument in writing in the words and figures set forth in said complaint; but this defendant believes that an agreement of that nature was executed by the said agents at or about the time stated in the said bill of complaint, which agreement, in addition to the said Slide and Spur Mines, also contained as part and
18 parcel thereof an agreement to sell and convey with the said mines and for the same consideration 160 acres of timber land situated near said mines, together with all mining tools and implements then in use in connection with said mines, and also all horses, wagons, live and dead stock, and other property at that time owned by the complainants and used in the operation and working of said mines.

And this defendant, further answering, says that as to whether at the time of the execution of said proposition, as set forth in said complaint, it does not know and cannot set forth whether it was understood and agreed by and between the complainants and the said John Haldeman that the said John Haldeman should proceed to procure the incorporation of the company under the laws of Great Britian, as in the said bill of complaint set forth, but this defendant believes that such or a similar understanding and agreement existed between the said complainants and the said Haldeman at that time.

And this defendant, further answering, saith that the said John

Haldeman did proceed to organize or was partially instrumental in organizing this defendant as a mining company under the laws of Great Britian, as in the said bill of complaint set forth, and with the powers and authority as therein stated.

This defendant admits that the capital stock of this defendant so formed and organized was, as in said bill of complaint mentioned, four hundred thousand pounds, divided into shares as therein stated, but saith that such organization was not completed some time prior to the 24th of May, 1887, but was completed on that day and not before.

And this defendant further saith that the formation or organization of said company took place in pursuance of an agree-
19 ment made on the 16th day of May, 1887, between the said John Haldeman and one Harry Edward Gilbert, of which agreement the following is a true copy:

"An agreement made this sixteenth day of May, one thousand eight hundred and eighty-seven, between John Haldeman, of 38 Old Jewry, in the city of London, gentleman (hereinafter called the vendor), of the one part, and Harry Edward Gilbert, of 12 Holford Road, Richmond, Surrey, gentleman (but without personal responsibility), for and on behalf of a company intended to be incorporated under the limited liabilities companies acts, one thousand eight hundred and sixty-two to one thousand eight hundred and eighty-three, under the name of the Slide and Spur Gold Mines, Limited (hereinafter called the company), of the other part:

"Whereas the vendor is the beneficial owner of the mining properties known as the Slide and Spur mines, situated in the Gold Hill mining district, Boulder county, Colorado, United States — America, and of certain timbered lands situate in the same place, more fully described in the report of Mr. Edward O. Wolcott, dated the 14th day of January, one thousand eight hundred and eighty-seven, and the plan therewith, a copy of which report and plan is attached hereto;

"And whereas the vendor is desirous that a company should be incorporated under the companies acts, one thousand eight hundred and sixty-two to one thousand eight hundred and eighty-three, for the purpose of purchasing, developing, and working the said properties, being the company for and on behalf of which the said Harry Edward Gilbert joins in this agreement:

"Now it is hereby agreed as follows:

"1. The company shall be incorporated within one calendar month from the date hereof, and the nominal capital of the company shall be four hundred thousand pounds, divided into four hundred thousand shares of one pound each.

"2. The vendor shall sell to the said Harry Edward Gilbert, for and on behalf of the said company when formed, the said properties, and also all *that* the ore which has been raised since April, one thousand eight hundred and eighty-six, with the exception of one hundred and seventy-three and a half tons reported to have been

sold, and all the rights and benefits appertaining thereto, and all the share, estate, right, title, and interest of the vendor therein, free from all incumbrances; and the vendor hereby undertakes with the said Harry Edward Gilbert that the same are now absolutely free from incumbrances, and shall, at the expense of the company, cause the same to be duly conveyed to and vested in the said company, the company (at their own expense) to be duly registered as the proprietors of the properties on the completion of the purchase for the sum of three hundred and seventy-five thousand pounds (£375,000 0 0)—that is to say, as to eighty-five thousand pounds (£85,000 0 0), in cash within fourteen days after the first allotment of shares, or so soon thereafter as may be agreed on, and upon the property, free from incumbrances, becoming, to the satisfaction of the said company or its legal advisers, vested in the said company, or as it may direct, under a good and perfect title, and, as to one hundred and thirty-three thousand pounds (£133,000 0 0), in fully paid up shares of the company of one pound each, numbered from one to one hundred and thirty-three thousand, both inclusive, and, as to the balance of one hundred and fifty-seven thousand pounds (£157,000 0 0), in cash or fully paid up shares, or part in cash *or* part in shares, at the option of the directors of the said company: Provided always, and it is hereby agreed, that all such fully paid shares or part thereof, as hereinbefore mentioned, shall be allotted as fully paid shares to the vendor or his nominees within one calendar month after the first allotment of shares, and provided the property shall then be vested in the company or otherwise, as hereinbefore provided: Provided always, and it is hereby agreed, that the company, in making cash payments to the vendor, shall reserve out of the shares subscribed for a minimum of five thousand (5,000) shares towards providing working capital.

"3. The memorandum and articles of association and the prospectus shall be submitted to the vendor for his approval before issue.

"4. The vendor shall give to the proposed company all the necessary information and assistance for the formation of the same and for carrying on of its intended operations.

"5. The vendor will discharge all payments and claims for commissions, negotiations, services, brokerages, advertising, printing, legal, engineer's reports, and other expenses, preliminary or otherwise, up to the time of the first allotment of shares, and the vendor shall indemnify the company and the directors thereof from and against all proceedings, claims, and demands in respect of the said preliminary expenses, but the vendor shall be at liberty to make any arrangements with agents or others under this clause for providing said expenses, so that such arrangements do not involve any liability on the company.

"6. On the adoption of this agreement, with or without modification, by the company the said Harry Edward Gilbert shall be discharged from all responsibility, and, if the company so require, a fresh agreement shall be entered into between the vendor and the

company in the same terms as this agreement and in substitution therefor.

"7. Any dispute or difference which may arise touching these presents or any matter or thing arising thereunder or in connection with shall be referred to arbitration in the usual way, as provided by the common-law procedure act, one thousand eight hundred and fifty-four.

"As witness the hands of the said parties on the day and year first above written.

"JNO. HALDEMAN.
"HARRY EDWARD GILBERT.

"Witness:
"T. A. DENNISON,
"*Sol'r, 4 Eastcheap.*"

This defendant, further answering, shows that upon its organization it issued its prospectus, elected its board of directors and managers, and commenced to negotiate and do business with the said John Haldeman with respect to the purchase of the property from the said John Haldeman, as in the said bill stated, and that the said John Haldeman, at the time of making his agreement with the said complainants, in October, 1886, was acting in contemplation of the formation of this defendant company or some similar
21 company, to which company, when organized, the said John Haldeman, as the purchaser of said mining property from the complainants, as in the said bill stated, proposed to sell and convey the same, he, the said John Haldeman, being the vendor and grantor thereof to such company.

And this defendant denies that the said John Haldeman was acting for the sole purpose of procuring the said lode property as the property of this company so to be formed, but alleges that he was acting for the sole purpose of procuring the said property as his own and making sale and conveyance thereof to the said company by himself as the beneficial owner thereof, as specified in the above agreement of the 16th of May, 1887, between him, the said Haldeman, and the said Harry Edward Gilbert.

This defendant, further answering, says that it has been informed and believes that the said John Haldeman did not comply with the terms and conditions of the contract entered into between himself and the said complainants, but that he did, prior to the 18th day of August, 1887, pay to the said complainants the various sums of money set forth in said complaint.

This defendant, further answering, says that it admits that on the 18th day of August, 1887, the said John Haldeman entered into an agreement with the complainants in the words and figures set forth in said bill of complaint; and further admits that in the making of the said contract the said J. Fenton Seymour was acting for and in behalf of the complainants by virtue of power of attorney to him made and delivered for that purpose, and that upon the execution of said contract the complainants approved the same, as in the said bill of complaint alleged, and that at the date of said contract this

defendant had been incorporated and had commenced to do business by the issuance of shares, and that all the acts and doings
22 of the said John Haldeman with respect to the said contract of said August 18th were then known to this defendant; but this defendant says that it is not true that said contract was made in its behalf or with the assent or consent of its board of directors or for its benefit as well as for the benefit of the said John Haldeman, but alleges that the same was made for the sole and exclusive benefit of the said John Haldeman.

This defendant, further answering, admits that afterwards and before the 5th day of October, 1888, in the performance of said contract the said John Haldeman paid to the complainants upon said contract the various sums of money set forth in said bill of complaint; but denies that this defendant paid to the said complain-ts the said sums of money or any part thereof, or ever agreed to pay the same or any part thereof or to become bound to the complainants therefor.

This defendant, further answering, says that the sum of ten thousand pounds, specified in said last-named contract to be forthwith paid by the said John Haldeman to the said complainants "upon the titles of the said mines being registered in the name of the Slide and Spur Gold Mines, Limited, free from all charges and incumbrances" (which titles the said J. Fenton Seymour undertook and agreed to register upon the said ten thousand pounds being deposited with the said Wells, Fargo & Co.), was so paid through Messrs. Wells, Fargo & Co. on the 6th day of September, 1887, in accordance with the terms of said contract, on which 6th day of September, 1887, the said J. Fenton Seymour procured the said titles to be so registered in the office of the county clerk and recorder of Boulder county, Colorado, in which county the said properties were situated, and the said sum of ten thousand pounds was on that day received by the said complainants.

23 This defendant, further answering, says that upon the said agreement of August 18th, 1887, being brought to the knowledge of this defendant and a copy thereof laid before its board of directors, on the 10th day of September, 1887, an agreement, in writing, bearing date on the day and year last aforesaid, between this defendant, of the first part, John Haldeman, of the second part, and the said Harry Edward Gilbert, of the third part, in the words and figures following, was made and executed by the said parties respectively:

"An agreement made the tenth day of September, one thousand eight hundred and eighty-seven, between the Slide and Spur Gold Mines, Limited, hereinafter called the company, of the first part; John Haldeman, of 38 Old Jewry, in the city of London, gentleman, of the second part, and Harry Edward Gilbert, of 12 Holford Road, Richmond, Surrey, gentleman, of the third part:

"Whereas by an agreement dated the sixteenth May, one thousand eight hundred and eighty-seven, and made between the said John Haldeman, of the first part, and the said Harry Edward Gilbert for

and on behalf of the company, then intended to be and which has since been formed under the companies acts, 1862 to 1886, of the other part, the said John Haldeman agreed to sell and the said company to purchase certain mines and property in the said agreement described, upon the terms and subject to the stipulations and conditions therein contained:

"Now these presents witness and it is hereby agreed as follows:

"1. The said recited agreement is hereby, subject to the modifications thereof hereinafter contained, adopted by and shall, subject to such modifications, be binding on the company and on the said John Haldeman in the same manner and be read and construed in all respects as if the company had been in existence at the date thereof and had been party thereto instead of the said Harry Edward Gilbert.

"2. Clause 2 of the said agreement shall be cancelled and the following clause shall be substituted in lieu thereof, viz: The said John Haldeman shall sell to the said company the said lands, mines, and properties referred to in the said agreement of the sixteenth day of May, one thousand eight hundred and eighty-seven, and the freehold thereof free from all incumbrances and liabilities whatsoever, and also all *that* the ore which has been raised since April, one thousand eight hundred and eighty-six, with the exception of one hundred and seventy-three and a half tons reported to have been sold, and all water and other rights, easements, benefits, and appurtenances belonging or appertaining thereto, and all the estate, right, title, and interest of the said John Haldeman therein, and also all machinery, plant, and effects, live and dead stock, on or belonging to the same or any part thereof, free from all incumbrances and liabilities whatsoever, and the said John Haldeman shall make out and show, to the satisfaction of the said company or such person as they may appoint, a perfect, complete, and indisputable title to the said lands and premises, free from all incumbrances
24 and liabilities whatsoever, according to the laws in force in Colorado, in the United States of America, who shall certify that the said title is free and unincumbered, and that the said John Haldeman has full right and power to sell the same to the said company freed from all incumbrances and liabilities whatsoever, but subject to any Government taxes, charges, or impositions which shall be properly payable by the said company for the purpose of vesting and registering the said properties in the company; and the said John Haldeman shall, at the expense of the company, execute and procure to be executed all deeds and documents and do and procure to be done all acts and things which the directors may be advised to be necessary for vesting the said mines and premises in the company as aforesaid, and at their expense for procuring the registration of the company as the proprietors and owners of the said mines and premises according to the customs and law of Colorado aforesaid at the time applicable to the district where the said mines are situate, for and in consideration of the absolute allotment to him of three hundred and seventy-five thousand one-pound fully paid shares in the said company, the said shares to be allotted

to the said John Haldeman or his nominees so soon as the directors shall have been satisfied that the said mines and property as aforesaid have been transferred to the company free from all incumbrances and liabilities whatsoever; that the deeds of transfer have been duly registered and recorded in the office of the county clerk and recorder of Boulder county, in the State of Colorado, in the United States of America, and that the company has been put and is in absolute working possession of the property as aforesaid, with such good, perfect, free, indisputable, and unincumbered title as aforesaid: Provided always, and it is hereby agreed, that all such fully paid shares or part thereof as hereinbefore mentioned shall be allotted as fully paid shares to the said John Haldeman or his nominess without any further liability of any kind whatsoever attaching thereto.

"The said Harry Edward Gilbert shall henceforth be discharged and freed from all liabilities and obligations whatsoever incurred by him under the said agreement of the sixteenth day of May, one thousand eight hundred and eighty-seven, in the same manner as if he had not been a party to that agreement.

"In witness whereof the parties hereto of the second and third parts have hereunto set their hands and the party of the first part have caused their common seal to be hereunto affixed, in the presence of two directors, the day and year first above written.

"Directors: R. M. M. KERRELL, *of Hillhouse.*
"J. KEATINGE POLLOCK. (Seal of the
"G. W. HUTCHINSON, *Secretary.* Company.)
"JNO. HALDEMAN.
"H. E. GILBERT.

"Witness to all the above signatures—
"LIONEL BLUGLEY,
"4 *Eastcheap, E. C., Sol'r.*"

This defendant, further answering, says that the following is a true copy of the deed of conveyance recorded in the office of the county clerk and recorder of said Boulder county, by which the titles of said mining property were registered by the said J. Fenton Seymour, in the name of this defendant, on the sixth day of
25 September, 1887, pursuant to the terms and conditions of the said agreement between the said J. Fenton Seymour, as agent for the complainants, and the said John Haldeman, as the purchaser of said properties from the complainants:

"This indenture, made the fourteenth day of June, in the year of our Lord one thousand eight hundred and eighty-seven, between Ellen R. Seymour, of the county of Arapahoe, and Wm. G. Pell, of the county of Boulder and State of Colorado, parties of the first part, and the Slide and Spur Gold Mines, Limited, a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, of the city of London, England, party of the second part, witnesseth:

"That the said parties of the first part, for and in consideration of the sum of seven hundred and fifty thousand dollars ($750,000), lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said party of the second part and to its successors and assigns the following-described property, to wit:

"The Slide lode, the patent for which is recorded in the office of the clerk and recorder of Boulder county, Colorado, in Book (59) fifty-nine, page ninety-six (96); also the Spur lode, crossing the said Slide lode and known in the United States land office at Central City, Colorado, and in the General Land Office at Washington, D. C., as mineral entry No. two thousand three hundred and twenty-two (2322) and lot No. three hundred and thirty-five (335), for which a duplicate receiver's receipt was issued to the locators of said lode claim, to wit, William G. Pell and J. Fenton Seymour, both said mining lodes or claims being situated in Gold Hill mining district, in said Boulder county, State of Colorado, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or, to the said premises and every part and parcel thereof, with the appurtenances:

"To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

"And the said Ellen R. Seymour and Wm. G. Pell, parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the premises above conveyed as of good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid, and that
26 the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of whatever kind or nature soever; and the above-bargained premises in quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said parties of the first part shall and will warrant and forever defend, always saving and excepting the same provisions, reservations, and limitations contained in the patent of the United States issued or to be issued for said survey lot.

"In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

"ELLEN R. SEYMOUR. [SEAL.]
"WILLIAM G. PELL. [SEAL.]

"STATE OF MICHIGAN, } ss:
County of Lenawee, }

"I, Geo. W. Fleming, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that Ellen R. Seymour and William G. Pell, personally known to me to be the persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

"Given under my hand and seal this nineteenth day of July, A. D. 1887.

"(Court Seal.) GEO. W. FLEMING.
"*Clerk of the Circuit Court in and for Lenawee County, State of Michigan.*"

(Endorsement on foregoing deed:)

"STATE OF COLORADO, } ss:
County of Boulder, }

"I hereby certify that this deed was filed for record on the 6th day of September, A. D. 1887, at 3.45 o'clock p. m., in my office, and duly recorded in Book 97, page No. 48.

"E. J. MORATH, *Recorder,*
"By E. L. COATES, *Deputy.*"

And this defendant, further answering, says that on the same 6th day of September, 1887, this defendant, at the request of the said John Haldeman, issued and caused to be delivered to the said Clarence Preston Elder, as trustee, three hundred and seventy-five thousand shares, of one pound each, of the stock of this defendant company, which shares were issued by this defendant and so delivered in full and actual payment by this defendant for the said mining properties, the titles to which had been so registered in the name
27 of this defendant pursuant to the tripartite agreement aforesaid between defendant and the said John Haldeman and Harry Edward Gilbert, and that the said shares so issued and delivered were taken and received by the said Clarence Preston Elder and deposited with Messrs. Wells, Fargo and Co., in London, to the intent that the same should be held as security for the due performance of the conditions of the said agreement of August 18th, 1887, and have hence thereto been so held by the said Clarence Preston Elder, except as the same or some portions thereof have been sold and disposed of by the said complainants, as shown by the said bill of complaint and hereinafter stated.

And this defendant, further answering, says that upon the recording of said deed of conveyance of said mining properties and the issuance and delivery of the said shares of stock, as aforesaid, this defendant became and was seized in fee and possession of the said properties for the consideration aforesaid, which was in good faith fully paid by this defendant to the said John Haldeman as the vendor of said properties to this defendant, this defendant, at the time of such payment and the recording of such conveyance, relying upon the said agreement of August 18th, between the said complainants and the said John Haldeman, as vesting in this defendant a full, perfect, and indefeasible estate of inheritance in said properties, free from all liens and incumbrances whatsoever; and this defendant further says and insists that the said agreement of August 18th, carried into execution as aforesaid, was a waiver and abandonment of any grantor's lien on the part of the said complainants in case such lien might otherwise have been held to exist, and that this defendant took the said property free and clear from
any such supposed lien or claim therefor on the part of the
28 complainants, and has so had title and possession of the said
property from the said sixth day of September, 1887, to the present time.

This defendant, further answering, says that in the negotiations between the said complainants and the said John Haldeman the said complainants had executed and deposited in escrow with Messrs. Wells, Fargo & Co., of Denver, Colorado, a deed of said properties direct to the said John Haldeman as the purchaser thereof, the intention being that a subsequent conveyance should be made by the said John Haldeman to this defendant; but that, acting under the advice of counsel and for greater convenience and less circuity of action such arrangement was abandoned and the deed, so executed by the complainants to the said John Haldeman, cancelled and destroyed, and in place thereof the deed of conveyance in question substituted, by which said properties were conveyed directly to this defendant in place of being first conveyed to said John Haldeman and by him afterwards conveyed to this defendant.

This defendant, further answering, says that it admits that on or about the 5th day of October, 1888, the said complainants entered into a proposition or agreement in the words and figures set forth in the said bill of complaint, which proposition or agreement this defendant says was made with the said John Haldeman alone and not with the said John Haldeman and this defendant, and that it was not an agreement or proposition in modification of the said contract of August 18th, 1887, but a wholly independent proposition or contract; and this defendant denies that it had failed to make payments as in the said contract last mentioned specified; and denies that it ever undertook or agreed in any manner or form to mako such payments or to be answerable therefor; and denies
that it was a party to the said proposition or agreement of
29 October 5th, 1888, or in any manner connected therewith.

And this defendant, further answering, says that, the said John

Haldeman having made default in the payments as in the said contract of August 18th, 1887, specified, the said complainants elected forfeit the amounts already paid upon said contract and to claim the three hundred and seventy-five thousand shares of stock received by them as collateral security as their own property, pursuant to the provisions of said contract, and that, having so made their election, they did, on the the 26th day of April, 1888, procure from the said John Haldeman a release of all claims whatsoever against them by or on the part of the said John Haldeman under said contract, including a release of any right or equity; which release was in the words and figures following:

"LONDON, *April 26th*, 1888.

"Know all men by these presents that I, John Haldeman, being unable to fulfill my contract, of date August 18th, 1887, with J. Fenton Seymour, hereby voluntarily release J. Fenton Seymour and his associates from any and all liability thereunder and surrender all and every claim by virtue of said contract which may accrue to me thereunder, this to be in force on and after this date.

"(Signed) JOHN HALDEMAN."

This defendant, further answering, says that the said complainants, having elected to enforce such forfeiture and having procured from said John Haldeman a release of all his right in and to said shares of stock and having theretofore claimed to hold and own the said shares of stock as their own property, did, as this defendant is informed and believes, on the said 5th day of October, 1888, enter into the said contract or agreement of that date with one Alexander Wilson, of Bannockburn, Scotland, and Arthur Rust, of Leicester, England, through their agent, one William Brown, in and by which the said complainants agreed that the said Clarence Preston Elder should deliver shares of said stock, as specified therein, upon payment of three thousand five hundred pounds to the said complainants as therein provided.

30 This defendant, further answering, says that, the said three thousand five hundred pounds having been paid to the said complainants by the said Alexander Wilson as thereby stipulated, the said shares of stock, to wit, seventy-five thousand shares to the Scotch subscribers, forty-five thousand shares to the said Arthur Rust, and fifteen thousand shares to the said Alexander Wilson, were afterwards delivered, pursuant to said agreement, to the several parties entitled thereto.

And this defendant, further answering, upon information and belief says that the said seventy-five thousand shares so to be delivered to the Scotch subscribers were delivered to them in consideration of a large sum of money, to wit, about fifteen thousand pounds of money advanced by the said subscribers to the said John Haldeman and by the said John Haldeman paid over to the said complainants under his said agreement with them for the purchase of the said mining properties, the said Scotch subscribers to be reimbursed by the delivery of such shares to them upon the subsequent dis-

tribution of the said shares, and that the forty-five thousand shares so to be delivered to the said Arthur Rust were delivered to him in consideration of the sum of twelve thousand five hundred pounds by him advanced to the said John Haldeman and by the said John Haldeman paid over to the said complainants as a part of the purchase-money for the said properties; all of which facts in relation to the advance of the money by the said Scotch subscribers and by the said Arthur Rust were well known to the said J. Fenton Seymour at and long before the making of the said agreement or proposition of October 5th, 1888, and that the said J. Fenton Seymour consented to the delivery of said shares to said Scotch subscribers and to said Arthur Rust upon the consideration aforesaid.

31 And this defendant, further answering, says that the said proposition or agreement of October 5th, 1888, so far as the same purported to be an agreement by or on the part of this company, the defendant, was wholly without authority from this defendant.

And this defendant, further answering, says that at the same time of making and entering into said agreement of October 5th, 1888, the said complainants, acting by and through their said agent, J. Fenton Seymour, for a valuable consideration, entered into an agreement with the said William Brown by which they, the said complainants, sold and agreed to deliver to the said William Brown 6,000 further or other shares of the stock of said company so at that time held and owned by the said complainants.

And this defendant, further answering, submits and insists that by reason of the sale and delivery of the said shares of stock in the said agreement of October 5th, 1888, specified to the said Alexander Wilson, the Scotch subscribers, and the said Arthur Rust that the said complainants waived and abandoned all claim or right to assert a grantor's lien upon said mining properties (if any they theretofore had, which this defendant denies) for the unpaid purchase-money due to them upon their said contracts with the said John Haldeman, which said waiver was not only valid and effectual as against this defendant, but also as against the said persons to whom the said shares of stock were delivered pursuant to said agreement, and especially as against the said Alexander Wilson, who at that time advanced and paid the sum of three thousand five hundred pounds in consideration therefor and in consideration of the delivery to him of the said 15,000 shares in the said proposition or agreement specified.

This defendant, further answering, denies that said proposition of October 5th, 1888, was received or accepted by this defendant,

32 or that the said three thousand five hundred pounds mentioned in said proposition and so paid to the complainants by the said Alexander Wilson, as above stated, was or ought to have been or could have been credited to this defendant upon said contract or as a party to the said contract or any other contract between this defendant and the said complainant, as in the said bill alleged, and says that it is not true that the said complainants caused to be

delivered to this defendant a deed of the said property in manner and form or at the time in the said bill of complaint alleged; and further denies that the delivery of the deed which was made to this defendant, as above herein set forth, was so made with any agreement or understanding whatever with respect to the purchase-money or price of the said property, except that the same was to be and was fully paid by the delivery of the said three hundred and seventy-five thousand shares of the stock of this defendant, said deed so delivered being the only deed ever made and executed to this defendant; and denies that it was then and there understood or agreed that the said purchase-money, viz., the balance remaining unpaid by the said John Haldeman of the purchase price or any part thereof, as in the said bill alleged, should be due or payable or should be paid within a short, or any, time by this defendant, or should be by this defendant in any manner paid in accordance with the agreement of the said complainants with the said John Haldeman; and denies that this defendant has ever at any time or in any manner or by any agreement, verbal or written, assumed or agreed to pay to the said complainants any part of the purchase-money of the said mines and property as contracted to be paid by the said John Haldeman.

And this defendant, further answering, admits that the said J. Fenton Seymour did afterwards, with the authority and by
33 the direction of this defendant, assume the duties of resident manager of said lode mining property, but that the same was not assumed in pursuance of said proposition, but denies that the said J. Fenton Seymour did proceed to work the said mines for this defendant or in the interest of this defendant.

And this defendant, further answering, denies that from the time when negotiations were first entered into for the sale of the said property, in the month of October, 1886, until the time of the filing of the said bill, or during any portion of said time, that the complainants have been expending money upon the said lode property or the development thereof or in the working of the said property; denies that such alleged work or any work has been with the knowledge, assent, or consent of this defendant company or with the understanding or agreement on the part of this defendant company that whatever moneys should be expended by the said complainants over and above the ore taken out of the said property should be reimbursed to them and paid by this defendant or by the parties purchasing said property.

And this defendant, further answering, denies that this defendant during all or any of the time the said negotiations were going on, or especially after an agreement between the said John Haldeman and the complainants, that a company should be formed, as stated in said bill, has been aware that such developments and expenditures were being made by the complainants in respect of the said property, and avers that it had no notice whatever of the same, and denies that by any agreement with this defendant company it was agreed that this defendant, when it should become the owner of said property, should be liable to pay or would pay or reimburse

the complainants for any expenses of the kind; and, on in-
34 formation and belief, denies that any such agreement was made between the said complainants and the said John Haldeman; denies that in carrying on such work in the years 1886 and 1887 and up to the 15th December, 1888, the complainants had expended for development and work as aforesaid the sum of $29,453.59 or any similar sum, but has been informed and believes that the said complainants may have received from the proceeds of ore smelted and sold as the products of said lodes, unlawfully and without authority on the part of the said complainants, the sum of $13,103.03, and possibly a greater sum, and denies that there is still due to the complainants from this defendant for or on account of such work or expenditure or any work or expenditures the sum of $16,350.56 or any other sum, and submits and insists that for any sum so claimed to be due by the complainants they have by law no lien whatever upon the said mines or mining properties.

And this defendant, further answering, says that it is not true that the said J. Fenton Seymour, in said contract of August 18th, 1887, did do or perform, in his own name or for and on behalf of the complainants, each and every or any thing required of him by said contract, nor did he take charge of said mining property or work the same, or make weekly returns of the character and in the manner in the said contract specified, nor have the said complainants or the said J. Fenton Seymour at all times or at any time performed each or any act in the said contract to be done and performed by each or any of them or by the said J. Fenton Seymour.

And this defendant, further answering, says that the failure of the said John Haldeman to comply with the terms of said contract, if he failed and refused, as in the said bill alleged, which this defendant does not admit, was caused by reason of the default of the said J. Fenton Seymour and the said complainants to per-
35 form the said contract and keep the conditions precedent therein by them to be kept and performed.

This defendant, further answering, says that it denies that the whole amount of said purchase price of said property, viz., the sum of $750,000, less the amount paid thereon, amounting to the sum of $123,788.50, together with an amount in excess of the expenditures made by the complainants on said property, as in said bill alleged, is still due or any part thereof due from this defendant company; denies that the complainants took no security by mortgage or otherwise for the payment of the said sums so due to them and have no security at this time or any contract relating to the same, but says that, as shown by the contract set forth in said bill and hereinbefore in this answer, it fully appears that the said complainants did take security for the payment of the said sums of purchase-money from the said John Haldeman by the pledge of 375,000 shares of the stock of this defendant company as collateral security therefor, of which security the said complainants have availed themselves and enforced as hereinbefore stated and set forth, and denies that the said complainants have any lien upon said mines or property or claim whatsoever against the same in the

hands of this defendant as a security for the performance of any contract whatever for the sale of the same.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this
36 defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE SLIDE AND SPUR GOLD MINES (LIMITED),
By L. S. DIXON, *Its Solicitor.*
L. S. DIXON,
Solicitor and of Counsel for the Defendant, The Slide and Spur Gold Mines (Limited).

(Endorsed:) No. 2392. United States circuit court, district — Colorado. Ellen R. Seymour *et al. vs.* The Slide and Spur Gold Mines (Limited) *et al.* Answer of def't, The Slide and Spur Gold Mines (Limited). Filed May 6, 1889. William A. Willard, clerk. L. S. Dixon, solicitor.

And afterwards and on, to wit, the 10th day of June, A. D. 1889, came again the said complainants, by their solicitors aforesaid, and filed in said court and in said cause their exceptions to the answer of the defendant heretofore filed herein; and the said exceptions are in words and figures as follows, to wit:

Exceptions to Answer.

In the Circuit Court of the United States, District of Colorado.

ELLEN SEYMOUR and WILLIAM G. PELL, Complainants,
vs.
THE SLIDE & SPUR GOLD MINES, Limited, Defendant.

Exceptions taken to the answer of The Slide & Spur Gold
37 Mines, Limited, the defendant, to the bill of complaint of Ellen Seymour and William G. Pell against the said The Slide & Spur Gold Mines, Limited.

First exception.

For that the said defendant has not answered to the best of its knowledge, information, and belief as to whether John Haldeman did, in pursuance of an agreement to that effect made with complainants, proceed to organize a mining company under the company acts of 1862 to 1883, laws of Great Britain.

Second exception.

For that the said defendant has not answered to the best of its knowledge, information, and belief as to whether one of the expressed objects of such organization was to adopt or carry into effect, with or without modification, the contract between said Haldeman and said Gilbert as set forth in the complaint; but said defendant simply alleges that the formation of the company was simply in pursuance of a contract between Haldeman and Gilbert, and the said answer is in that respect evasive and uncertain.

Exception three.

For that said defendant has not answered to the best of its knowledge, information, and belief as to whether the said Haldeman was at the time of accepting the option, on October 19th, 1886, acting in contemplation of the formation of the defendant company and for the sole purpose of procuring the lode property as the property of the defendant company; it neither admits or alleges, but evades the answer.

Exception four.

For that defendant answers that said Haldeman was acting for the sole purpose of procuring the property as his own and
38 selling to the company is impertinent to anything in said complaint contained, and it is also an answer by way of a negative pregnant.

Exception five.

For that it has answered without admitting or denying the allegations of the complaint that said Haldeman did not comply with the terms of the contract of October 19th, 1886, or that the sums mentioned were paid in part performance of the contract.

Exception six.

For that the said defendant has not either admitted or denied that said Haldeman did fail to comply with the terms of his agreement as set forth on page 14 of the complaint.

Exception seven.

For that by the answer the said defendant has admitted (page 9 of answer) that said defendant had full knowledge of the agreement of August 18th, 1887, as early as September 10th, 1887, and had full knowledge that the amount of purchase-money had not been paid by said Haldeman, and that said Haldeman could not make deed free and clear of incumbrance. Said answer further shows (pp. 10 and 11) that the company entered into an agreement with Haldeman to procure a title in consideration of 375,000 shares of the stock of the company to be allotted to him, but there is no allegation that the complainants ever agreed with the company or

Haldeman that they would exchange the title free and clear of incumbrance for stock, but only as security for the due performance of the contract of August 18th, 1887 (p. 16); nor does the simple fact of the delay and record of the deeds, as set forth in the answer, vest a full and complete title free from the lien of the vendor, nor do the facts relative to the contract of August 18th, 1887,
39 show any waiver of the vendor's lien; nor does such answer, in the release executed by said Haldeman, show any enforcement of any forfeiture from Haldeman nor any release by Haldeman of any rights to the stock so issued (p. 19); nor does the sale of stock to Scotch subscribers, as set forth in said answer (pp. 20 and 21) show any release of vendor's lien; nor does the answer deny that the amount stated in the complaint of the purchase price of the property is due and unpaid, but simply denies that it is due from the defendant, and the allegations of the complaint were that it was due from the defendant and Haldeman, and so the plaintiffs say that said answer presents no defense to complainants' cause of action.

Complainants therefore pray that said defendant may put in a better & further answer thereto.

TELLER & ORAHOOD,
Attorneys for Complainants.

(Indorsed:) Circuit court of United States. 2392. Ellen Seymour *et al. vs.* The Slide & Spur Gold Mines (Limited). Exceptions to answer of deft. Filed Jun- 10, 1889. William A. Willard, clerk. Teller & Orahood, att'ys for comp'ts.

And afterwards and on, to wit, the 17th day of July, A. D. 1889, the same being one of the regular juridical days of the May term, A. D. 1889, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Exceptions to Answer Overruled.

ELLEN R. SEYMOUR and WILLIAM G. PELL *vs.* THE SLIDE AND SPUR GOLD MINES, Limited, and JOHN HALDEMAN.	2392. In Chancery. Bill for an Accounting and for Other Relief.

40 At this day come the said complainants, by Willard Teller, Esq., their solicitor, and the said defendants, by L. S. Dixon, Esq., their solicitor, also come.

And the exceptions to the answer having heretofore come on to be heard and having — argued by counsel and by the court taken under advisement, and the court being now sufficiently ad-
41 vised in the premises, it seemeth to the court now here that the said answer is sufficient to be replied unto, and so the said exceptions to the answer are overruled.

And thereupon, on motion of the said defendants, it is ordered by

the court that the said complainants reply to the said answer by the 15th day of September next.

And afterwards and on, to wit, the 14th day of September, A. D. 1889, came again the said plaintiffs, by their solicitors aforesaid, and filed in said court and in said cause their replication to the answer heretofore filed herein; and the said replication is in words and figures as follows, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States, District of Colorado.

ELLEN R. SEYMOUR and WILLIAM G. PELL, Complainants, *vs.* THE SLIDE & SPUR GOLD MINES (Limited), Defendant. } In Equity.

The replication of Ellen R. Seymour and William G. Pell, complainants, to the answer of The Slide & Spur Gold Mines (Limited), Defendant.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

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TELLER & ORAHOOD,
Solicitors for Complainants.

(Indorsed:) 2392. Circuit court of U. S., district of Colorado. Ellen Seymour *et al.*, complainants, *vs.* Slide & Spur Gold Mines (Limited), defendants. In equity. Replication. Filed Sep. 14, 1889. William A. Willard, clerk. Teller & Orahood, solicitors for complainants.

And afterwards and on, to wit, the 7th day of October, A. D. 1889, at chambers, before the Honorable Moses Hallett, district judge, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order for Taking Testimony.

ELLEN R. SEYMOUR *et al.*
vs.
THE SLIDE AND SPUR GOLD MINES, Limited, and JOHN HALDEMAN.
2392. In Chancery. Bill for an Accounting and for Other Relief.

On motion of Mr. L. S. Dixon, solicitor for the defendant, Mr. Willard Teller, solicitor for the complainants, being present and consenting thereto, it is ordered that the complainants take their evidence in support of their bill within twenty days from this date; that the defendant take its evidence within forty-five days
43 thereafter, and that within ten days thereafter the complainants take theirs in reply.

And afterwards and on, to wit, the 20th day of February, A. D. 1890, the testimony taken before Andrew W. Brazee, an examiner of this court, was opened, published, and filed; and the said testimony was in words and figures as follows, to wit:

Testimony for Complainants.

ELLEN R. SEYMOUR & WILLIAM G. PELL
vs.
THE SLIDE & SPUR GOLD MINES, Limited.

Index to following testimony.

J. Fenton Seymour, direct ex., p. 1.
cross-ex., p. 18, p. 21.
redirect, " 35.
recross, " 37.
Exhibit A—Agreement of August 19th, 1887.
" B—Power of att'y to G. Q. Richmond.
" D—Cablegram (form).
" E— " (form).
" C—Copy of telegram, Sep. 23, 1887, Seymour to Haldeman.
" F—Cablegram, Nov. 2, 1887, Seymour to clerk.
" G—Cablegram, Oct. 12, 1887, Elder to Seymour.
" H— " Sep. 23, 1887, Elder to Seymour.
" J—Telegraph, Oct. 22, 188–, Elder to Seymour.
" K—Telegraph, Sept. 30, 1887, Elder to Seymour.
" L—Telegraph, Oct. —, 1887, Seymour to Elder.
Follow page 38 in above order—p. 38.
44 George Woodgate Hutchinson, direct ex., p. 39.
Clarence P. Elder, direct ex., p. 42.
cross-ex., p. 59.
redirect ex., p. 65.
recross-ex., p. 70.
redirect ex., p. 72.

Exhibit 1—Cablegram, Haldeman to Elder, Nov. 1, 1888.
" 2— " " " Elder, " 17, 188–.
" 3—Letter, Seymour to Elder as to Richmond, Oct. 21, 1887.
" 4—Agreement of Seymour, Pell & Sanderson with Richmond.
" 5—Haldeman releases all claim under contract of Aug. 18th.
" 6—Cablegram, Richmond to Elder of 25th May, 1888.
" 7—Cablegram to Elder of 6th May, 1888.
" 8— " Seymour to Elder, 3d January, 1888.
" M—Haldeman release.
" N—Cablegram, Elder to Richmond, May 24, 1888.

These exhibits follow page 72 in the above order.

Caption.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

Be it remembered that on the 15th day of October, in the year of our Lord one thousand eight hundred and eighty-nine, herein mentioned, appeared before me, Andrew W. Brazee, an examiner in chancery of the circuit court of the United States for the district of Colorado, at my office, 1540 Champa street, Denver, Colorado, to wit, the complainants in said cause, by Willard Teller, Esq., one of their solicitors, and the defendant, by L. S. Dixon, Esq., its solicitor, for the purpose of taking the testimony of the complainants in the cause hereinafter mentioned.

And on this day and on succeeding days to which the
45 taking of evidence herein was successively adjourned, as hereinafter stated, or on some such days, came before me also J. Fenton Seymour, of the apparent age of fifty-six years; Clarence P. Elder, of the apparent age of forty-nine years, and George Woodgate Hutchinson, of the apparent age of fifty-four years, to testify and the truth to say, as witnesses on the part and behalf of the complainants in a certain suit or matter of controversy pending and undetermined in the circuit court of the United States for the district of Colorado, at Denver, in said district, wherein Ellen R. Seymour and William G. Pell are complainants and The Slide and Spur Gold Mines, Limited, is defendant.

And the said witnesses, having by me been first duly cautioned and sworn according to law respectively to testify the truth, the whole truth, and nothing but the truth in the suit and matter of controversy aforesaid, were severally examined before me on oral interrogatories propounded to them respectively by counsel, as in their several depositions following appears—that is to say:

In the Circuit Court of the United States, District of Colorado.

ELLEN R. SEYMOUR & WILLIAM G. PELL
vs.
THE SLIDE AND SPUR GOLD MINES, Limited.

OCT. 15, 1889.

The complainant appeared by Willard Teller, Esqr., her solicitor, and the defendant, by L. S. Dixon, Esqr., the solicitor for the purpose of taking testimony of complainant, appeared; whereupon the following proceedings were had.

Deposition of J. FENTON SEYMOUR, a witness produced on the part of the complainant, who, being duly sworn and orally
46 interrogated by counsel, testified as follows:

My name is J. Fenton Seymour; my age, fifty-six years past; reside in Denver, Colorado; by occupation am a miner; I am the husband of Ellen R. Seymour, one of the complainants, and her agent.

(Here copies of the pleadings in the cause are here produced by complainants.)

I am also the agent of William G. Pell, and have been their agent for ten or twelve years. I have been acting as her agent under a power of attorney since 1886, and was such agent during that year and up to the present time. In 1886 one A. B. Davis had an option to purchase the property mentioned in the complaint at $750,000, which option expired September 1st, 1886. I think I have the original of that contract; and, if so, I will produce it before this testimony is closed. I don't know anything about what Bruff did under that option except by hearsay, to the effect that he presented the property in London. Among other parties to whom he presented it was John Haldeman.

The defendants object to foregoing testimony on the ground that it is hearsay and not responsive to the allegation of the bill.

John Haldeman resided at 38 Old Jewry, London. Bruff did not comply with his option and didn't take the property. Afterwards and in October, 1886, Mr. Clarence P. Elder, of Denver, Colo., cabled and — letter communication with Haldeman asking if the Slide mine could be purchased direct from the owners. Mr. Elder came to me showing his cables and extracts from his letters asking about the property and about purchasing the property described in the complaint. I made arrangements with him for the purpose or gave him what might be called a verbal option on the property until Mr. Haldeman or his rep-
47 resentatives could meet Mr. Elder and myself in New York. Mr. Elder and I left Denver for New York some time in October, 1886. At New York we met Mr. D. C. Haldeman, agent of John Haldeman, and gave John Haldeman an option on this

property in writing (showing complaint), a copy of which is set out in the complaint and signed J. F. Seymour & A. B. Davis. This option was signed by A. B. Davis, as he claimed that his option ought to be extended, as Mr. Bruff, his agent, had and could make contracts satisfactory. For that reason I had Mr. Davis sign the contract, with the understanding that it would save any trouble or litigation with his option. The understanding between me and D. C. Haldeman, as agent of John Haldeman, was that John should not procure an incorporation of a company to purchase the property until one-half of the purchase-money was paid at the expiration of the option. I can't tell the exact date when Mr. Foster's report on the property was completed and forwarded, but it was some time in November, 1886. It was discussed between myself and D. C. Haldeman and Clarence P. Elder about the 19th of October, 1886, about the eventual formation of a — incorporating the Slide & Spur Mines & to purchase these mines. John Haldeman paid the first money to apply on the purchase of the property in January—about the 26 of January, 1887. The net payment to us was $24,250; that was the first payment. About March 8th John Haldeman paid $13,392.00 net to apply on that option. The next was $6,311.50, paid on 22d March, 1887, by John Haldeman. On the 6 July, $14,490.00 by John. That was all that was paid under that contract.

Unbeknown to me and without my consent they incorporated the Slide & Spur Gold Mines, Limited, and placed the matter before the public in London in accordance with their laws, I suppose. I don't remember now how I first got the information of this incorporation. Mr. Elder and I got it about the same time. I
48 think we were informed by receiving the prospectus, I should say some time in April or May, 1887. I have no means of telling the date of our receiving the information. About that time Mr. John Haldeman began to request me to come to Europe, or requested Mr. Elder to come and bring me with him. Mr. Elder & I talked the matter over and finally decided that we would go over on their making another payment.

John Haldeman consented to make another payment & made it July 6, already mentioned. Mr. Elder & I left New York the 23 day of July, 1887; arrived in London about 8 or 9 days from that time, and met John Haldeman every day for some time, and also parties who had furnished a portion or all the money we had received. We talked over the matter of the Slide business. I insisted on the payment of the balance of the purchase-money. Mr. Haldeman claimed to me that he would have to form syndicates to raise the balance of this money to pay us up. So Mr. Haldeman wanted to make some new contract with me, so that the company could be made solid and legal in accordance with the English laws, so as to get subscribers to the stock for the purpose of paying me off. At this time title was in Ellen R. Seymour and William G. Pell and an equity in myself. A deed had been made and executed by Ellen R. Seymour and William G. Pell and a quitclaim deed by me to John Haldeman, and the deeds had been deposited with Wells, Fargo & Co., here, on the making of the first payment, in

escrow. Then, before Mr. Elder and I left for England, I think it was, Mr. Haldeman requested Mr. Elder to have these deeds made to the company. I think they were so made and deposited with Wells, Fargo & Co. in escro-, to be delivered on the payment of all the money called for by the option, but under no circumstances without Mr. Elder's and my consent. I think that was the way.

Several draft skeletons of contracts were presented to me. I insisted on Mr. Haldeman presenting me to the parties furnishing the money. I think he had three different syndicates. I met two of them, and this matter was talked over with them, and they, in connection with Mr. Haldeman, wished me to make a proposition what I would do. I made them a verbal proposition, which I don't think was put in writing, that I would take $100,000 cash and have the deeds to the company put on record.

49

Defendants' counsel object to this evidence, because it is all merged in the contract of the 18th of August, 1887, set out in the bill & admitted in the answer.

This proposition was not accepted. I guess I am wrong. The proposition was taken into consideration by them, and the contract of August 18th resulted from my proposition. There was a great deal of talk from day to day and skeleton contracts made and presented to me by Mr. Haldeman and the representatives of two of the syndicates before the contract of August 18th was decided upon. I objected all the way through to their having possession of the property or issuing stock until I had the $100,000. Finally the contract of August 18th was signed. They made various promises to induce me to sign the contract which are not in the contract.

Counsel for defense —, because all promises are merged in the contract and the evidence of them not responsive to the bill.

The understanding was they agreed to pay the $100,000 to me—$50,000, as the contract states—and told me how they would raise the other $50,000.00. That was to be raised from the third syndicate, which I had not seen. They claimed to me that they had information that the property hadn't paid anything & wouldn't pay anything; wanted to know what I could do and what I would do. I asked what they wanted me to do. There were the representatives of the two syndicates and Mr. Haldeman together. They wanted to know—I think they asked if I could make the mines produce $2,000 a month. I said yes. $3,000 a month? I said yes. $4,000 a month? I said yes, if I contracted to do it. All of them agreed I should have the money if I should allow the title to be recorded in the name of the company, so as to comply with the laws.

50

Recess for dinner.

All of these conversations or agreements were with the representatives of two of the syndicates and Mr. Holdeman, and they claimed to me that there could be no satisfactory settlement of this

affair unless I consented to the properties being deeded to the company, to make their organization legal, so as to raise this money by subscription. I asked them if they had any syndicate to raise money, and they said they had, and I insisted upon seeing the syndicate—that is, the original of the syndicate. They brought me in contact with the syndicate called the "Scotch syndicate" and a syndicate I called the "Maloney syndicate." Then they went to work, Mr. Holdeman and Mr. Maloney, Mr. Maloney representing his syndicate, to draw up some contract, and they drew the contract up, and I talked with them in connection with the securities—that is, the security I would have for the balance of these payments after deeding this property, for after the property is deeded to the company the company virtually owns the property, and where am I? And I says we will fix this up in the contract, and they went to work and made different contracts, as I have stated before, and I rejected them. I finally got this present contract drawn up, and I accepted it—they all the time saying there is no doubt the money will be paid, for if we don't pay this money we will forfeit all of the right, title, and interest we have got, and I said to them you have two attorneys, and I think I had better get an attorney, and they said, All right, and I talked with Mr. Elder in connec-
51 tion with it—he was a pretty good attorney himself—and he says I know this is all right and these parties will pay the money as they agree, I am satisfied they will, and this contract is all right, and I don't see a thing but what it is on your side; so I executed the contract. At that time I was controlling the property, and by the contract I was to continue to control it. I remained in control of that property individually—I remained in control of the property for the owners of the property until December last. By the owners I mean William G. Pell and Ellen R. Seymour.

This ten thousand was raised and the deeds were delivered to the company on the payment of this ten thousand pounds. I took charge of the mine and commenced to work the property, before I came over, by telegraph, to carry out the eight-weeks clause in the contract. I remitted the amount, or, that is, the notice of the amount was sent. The understanding was & agreed that the Co. had nothing to do with the money—that is, the money was not sent, but the amount of money taken out of the mine was reported every week or as fast as a car-load was shipped. I think the amount was nearly twelve thousand dollars—between eleven and twelve thousand. The moderate increase, that would be eight thousand dollars, a thousand dollars a week, and the amount was between eleven and twelve thousand dollars.

They did not make payments in accordance with this contract. They never made a payment of the fifty thousand on this contract. They never made any payments until I made them a proposition in Paris a year ago the fifth of October. They paid the amount that that proposition called for, and that was the only amount of money they ever paid. I never had any notification that they could not do it. I have had telegrams all along that the payments

would be made; sometimes that the money would be sent
52 to-morrow—cablegrams of that kind—from Mr. Elder while he was there. Mr. Elder was made trustee of this company. Then I kept carrying the thing along and carrying it along, and promises came from Mr. Holdeman, and also from Mr. Elder, saying the money would be paid so and so, but it never was paid. Then I went over there on my own judgment—not at their request—to London a year ago, and from there to Paris. I did not meet any one in London. In Paris I met two of the syndicate—the moneyed men and their representatives—both in Paris. I met them in London afterwards and they were very anxious I should make some proposition on the basis of a settlement to go on with the thing and fix it up. I did so and they accepted the proposition—that is, a part of it. They paid the thirty-five hundred pounds called for, but they never carried out the balance of it. That proposition was in writing, and a copy of that proposition is set out in the complaint. A part of the proposition *proposition* was accepted and they paid the money under the proposition, and I went to work working the property for the company, as I had agreed, in the capacity of general manager of the property. I worked the property right along all the time—working the property to get the water out. I made an explanation to the men in connection with the water, that it would take some time to get the water out of the mine, and I put on all the force that I could at that time.

I was one of the directors of the company from its start, and I was not a director when I was over there, and was not at August 18th. I don't know the date I was made a director; my impression is it was some time in March, 1888. I did not know that I was a director until I got a notice by cable.

Of this stock of the company which is mentioned in the contract of August 18th, I have never had any of that stock in
53 my possession.

I never had any notice from Mr. Holdeman in respect to that contract of the 18th of August, as to whether he would or would not carry it out. I never had any such notice from him at all. He did not carry out the contract and pay the money. He never paid any money after the fifty thousand was paid—the ten thousand pounds.

In the August 18th contract, 1887, the Scotch syndicate agreed with Mr. Holdeman to furnish this ten thousand pounds. We were to receive it for the deeds placed on record to the company. After I made this contract of August 18th, I knew nothing about the arrangement Holdeman had made with the Scotch syndicate; then, after this contract of August 18th was made, Mr. Elder came to me down-town, in London, and asked me if I would sign a contract in case of the forfeiture of the Holdeman contract—that is, if we declared the Holdeman contract off, if I would protect the Scotch syndicate for fifty thousand that they had put in. I thought the thing over a few minutes, and I asked Mr. Elder—says I, What did you tell them, & did Mr. Holdeman request it? He said it was the wish of Holdeman. He says, I told them I thought you would not do it.

I told Mr. Elder then that I would give him an answer shortly. I thought the matter over, and I told him I would protect the Scotch — if the contract was satisfactory. So they wrote up a contract and presented it to me, and I looked it over and accepted the contract. It is the contract I have here. Before I signed that contract I asked Mr. Elder and Holdeman both if it was their wish that I should sign that contract, and they said it was. I did it for two purposes, to satisfy them and otherwise no injury to me, and it would place the thing on a solid footing. I knew, furthermore, that these gentlemen put their money in this thing a good deal on Mr. Elder's and my presence.

54 Said contract is marked Exhibit A and hereunto annexed.

In October Mr. Rust, who was the third syndicate that I have spoken of and did not see—I never knew how Mr. Holdeman raised the money that he paid the first fifty thousand with. It seems that he raised it through this Mr. Rust, and it seems he was what they called the Birmingham syndicate, which I heard nothing of or knew nothing of while in London. After I got to America I got some communications from Mr. Holdeman and Mr. Elder stating that there was dissatisfaction or something in connection with this syndicate and wishing me to place them on the same footing with the Scotch syndicate. Well, as I knew nothing about them, I declined to do it. I got some cables from Mr. Elder saying that Mr. Rust, of that syndicate, and Major McCarrol, who was chairman of the company, would leave some time and come over, and if I was in a position to make some satisfactory arrangement with them and place them on the same footing as the Scotch syndicate. They came over. Of course, I was under no obligations to them in connection with their part of the play; consequently I did not do anything except to make Mr. Rust a proposition. I made him a proposition that if he would pay the fifty thousand that contract of Aug. 18 called for, or say that Mr. Holdeman paid *a* fifty thousand to make the hundred thousand, as it would have to come through him in accordance with the contract, and I would in case of a forfeiture place him on the same footing with the Scotch, only I would add so much more of the stock on condition that he made a settlement with Mr. Holdeman. That proposition was never carried out and never was accepted. He went back for the purpose of carrying out that proposition, but he did not do it; but he had agreed with me during the time that if I would give him an order for forty-five thousand shares on the same basis as the Scotch in case of a
55 forfeiture, that there should be delivered to him forty-five thousand shares, that he would call it a settlement for any money that he might have in the organization or give to Mr. Holdeman; but I did not accept it or make any settlement whatever in connection with it; simply the statement I made to him by reason of the balance of the fifty thousand due on the August 18th contract.

Prior to their coming over I had sent Mr. G. Q. Richmond, from Pueblo, an attorney, over there. I sent him over there for the pur-

pose of being on the ground when the contract of August 18th expired and to keep me posted in connection with the situation, and I supposed he would be of some assistance to Mr. Elder in connection with propositions that might be made for final settlement. Mr. Richmond went over there and he -or Mr. Elder did not accomplish anything at all. Mr. Rust did not accomplish anything in connection with the proposition I made him, and I finally began to get disgusted and angry with the arrangement. So, finally, I made up my mind to go over, and I telegraphed Mr. Elder and Richmond to the effect that I should come over, and they telegraphed back that it was suicidal for me to come over and it was dangerous for me to come over there. I received these telegrams and finally answered that I would leave at a certain time, and I had made an agreement with Major McCarrol that I would go back with him. Major McCarrol had left here with the expectation of meeting me in New York. I got a telegram from Mr. Elder or Richmond that Mr. Richmond would sail to America at such a time with propositions. The result was I did not go. I remained for Mr. Richmond to come. Mr. Richmond came over. I met him in St. Louis. He had no propositions. He simply had letters of flattery of what he and Mr. Elder had done over there and asking us for some proposition, and he stayed a few days, and I gave him power of attorney to act further for us. They claimed—Mr. Elder and Rich-
56 mond—that they had made a settlement on that power of attorney and agreed to give Mr. Rust so much stock for this, and on my going over there last fall to get the matter settled up in some kind of shape—I did not see Mr. Holderman at all—I told Mr. Rust and the other parties that I would make a proposition and include Mr. Rust in the proposition, and I would give him the amount of stock. He consented and agreed to take from me in Denver, which was forty-five thousand shares. And I made the proposition. That is the reason I put the forty-five thousand in to Rust. The proposition was submitted to Elder before it was submitted to these people—the forty-five thousand and three months—giving Mr. Elder, Mr. Holderman, and all the parties interested three months for the purpose of making a final settlement in connection with this thing, so as to avoid any litigation. That is the reason forty-five thousand was consented to be given to Mr. Rust by me.

I never declared this contract forfeited or said that I would take into my possession — of this stock.

Mr. Holderman was a member of the board of trustees of this company at the time the August 18th contract was made, and I believe he was elected—at the time he received his position I think he was elected a director. There never was at any time any money received by me from anybody on this property except these amounts stated in the complaint. No person had any authority to receive any money except myself, and that is all I have received.

I met this Harry Edward Gilbert. I was present at the time the contract was signed, and he was present, and he knew what the con-

tract was, and I supposed he knew the facts. That is his signature to the contract.

Mr. Holderman has never given me notice that he could not comply with the contract. He has never given me any personal notice. He has otherwise. He has said he could carry out the contract if he was not hampered. I never at any time or place elected
57 to forfeit the amount that had been paid on the contract or claimed the three hundred and seventy-five thousand shares as mine. I had notified Mr. Elder and Richmond that we should do so, but we never did. They both advised otherwise. I only talked about it. I never at any time, either on the 26th of April or at any other time, procured from Mr. Holderman a release of his claim under said contract. I was acting as agent for the owners all the time. Mr. J. Q. Richmond and Clarence P. Elder had a power of attorney to act. They never had a power of attorney to release Mr. Holderman from this contract. They had a power to act, upon certain conditions. I have a copy of that power of attorney.

Said power of attorney, marked Exhibit "B," being an admitted copy, is hereto annexed.

And, aside from Mr. Richmond and Mr. Elder acting under this power of attorney, there was no one else authorized to act for the owners of this property, Mr. Pell and Ellen Seymour. It is untrue that I elected to forfeit this property and claim this three hundred and seventy-five — shares of stock, and the allegation in the answer that on the 26th day of April, 1886, I procured from the said John Holderman a release of all claims whatsoever on the part of said Holderman, which release is in the words and figures set out in said answer, is not true. They had no authority whatever to do anything of the kind. It is (nothtru contract*) that was made in October, 1888, was not made because Mr. Holderman was released. This three hundred and seventy-five thousand shares spoken of are supposed to be deposited with Wells, Fargo and Company or Ives and Allen, the representatives of Wells, Fargo and Company in Londodn, in the name of Clarence P. Elder, as trustee.

Q. Did you ever at any time agree to take stock in payment for this property—the stock of this company in payment for this property.

58 Objected to by counsel for defendant on the ground that it is not the best evidence.

A. No, sir; I never agreed to anything of the kind, different from the contracts. I have talked verbally with Mr. Elder in connection with the matter, but I never agreed to do anything of the kind.

Cross-examination of Mr. SEYMOUR by Mr. DIXON, of counsel for defendant:

This agreement, put in evidence, bearing date the 18th day of August and signed by myself and by Mr. Elder and Major McCar-

* Illegible.

rol and Mr. Brown on behalf of the Scotch syndicate, was made before the ten thousand pounds was paid over. It is not true that they made it a condition precedent that such an agreement should be made before they would pay over the money—that is, not with me. I never heard of such a condition and it was not suggested to me when I signed it. Mr. Elder came to me and asked me if I would sign the agreement, and I told him I would sign it if it was in proper shape. The agreement was signed by me in my room, in London, just before I started for America.

I had been up in Scotland with Mr. Elder and Holderman. I think Major McCarroll went along; he did not go with us at first, but he came afterwards; he came up there to see the Scotch syndicate and see if they could raise the ten thousand pounds. Before they paid over the money I suppose they exacted this agreement. It was presented to me and I signed it. There never was a word said about the agreement until the day before I was ready to leave—that is, after the August 18th contract was agreed upon; that was the agreement between myself and Mr. Holderman. I knew nothing about Mr. Holderman's arrangement with the Scotch. Mr. Elder came to me and said, Here, will you sign a contract
59 protecting the Scotch people in case of a forfeiture of the Holderman contract, and I said, I do not know; I will see. But I knew nothing about why they asked for this contract until I got back here. I cannot say that the contract should be signed before the money should be paid. It was never told me that that was a condition precedent; that I would have to sign such a contract before they would pay the money. I signed the contract and they did not pay the money until I got here. It was all agreed that they should pay it; and I do not know why they got up this contract, only, as I say, to protect the Scotch.

I know that this Scotch syndicate refused to advance any more money until the title was put in the company, as specified in this contract. I know that Mr. McCarroll said so. The conditions were the same in both contracts, precisely; but I knew nothing about the contracts the Scotch made with Mr. Holderman as to not paying the money. I understood that he expected to get the money from the Scotch syndicate. Mr. Elder told me so.

I caused the mine to be worked before I left London. The agreement provide that the mine shall be worked to its full capacity, after due registration of the title, and that the returns of the mine should be cabled to the company in the form of cables sent herewith, and I complied with that agreement by cabling in the forms furnished me for making that report. There were two forms furnished me or handed me just as I left London and was getting in the carriage, which I supposed at the time was under the agreement we had made in verbal conversation. I think I have those forms among my papers and I will look for them and produce them if I find them.

In Paris there was no agreement made, just a proposition; it was made and accepted. The proposition was made to Mr. Brown,

the attorney and representative of the Scotch syndicate, and,
60 I think, Mr. Ross. I am not positive about that. These parties were not at Paris when this agreement was drawn. The persons present were Mr. Brown, their attorney and representative, representing, I think, Mr. Ross's *s*indicate and the Scotch *s*indicate; that is what we called the Birmingham *s*indicate. I won't be positive about his representing the Birmingham *s*indicate. I suppose that Col. Wilson furnished 3,500 pounds. I consented to Col. Wilson having 15,000 shares on his personally advancing thirty-five hundred pounds. Of the persons composing the Scotch *s*indicate I only knew Major McCarroll, Col. Wilson, Mr. Brown, Shaw–Harvey; there was none others I met. The persons composing the second *s*indicate I was told was Malonry and Mr. Stanley. Those who composed the third *s*indicate I have been told were Mr. Rust and Mr. Johnson. There were two or three *s*indicates that I never met.

To enable the stock to be subscribed for it was necessary that this title should be registered on the company to comply with the laws of England and enable the stock to be subscribed for. I was informed by these parties that under the English law they could not issue any stock to anybody, even to Mr. Elder, as trustee, until the title to the property, represented by the stock, was in the company and free and clear of all incumbrance, and I was told that.

OCTOBER 24TH, 1889.

The parties appear by their respective counsel, whereupon the following proceedings were had:

Cross-examination of J. FENTON SEYMOUR continued:

Mr. DIXON:

Q. Colonel, you in your direct examination spoke about the syndicates, two of the syndicates being represented in these negotiations which took place which led to the contract of August 18, 1887. Who were these persons?

A. Major McCarroll was present. Mr. Brown was there only when it was settled.

61 Q. Where was Major McCarroll present?

A. He was present at Mr. Holderman's, No. 38 Jury street, several times while talking over the negotiations.

Q. Was that before or after you went to Scotland?

A. That was before we went to Scotland, and after I came back from Scotland he was there.

Q. Was anybody else there?

A. After I came back from Scotland?

Q. You say Major McCarroll, of the Scotch syndicate, was present when these negotiations were going on; was he present when the contract was made and signed?

A. He was present, I think, when the contract was signed.

Q. When the contract of August 18th was signed was Mr. Holderman present?

A. I am not sure; I think he was.

Q. I would like to have you be certain if you can be?

A. I cannot be certain, but I think he was.

Q. Where was the contract signed?

A. A copy of the contract—that is, the contract was remodeled.

Q. You stated the other day that they got down finally to the contract of August 18th, which you signed; now, I want to know where it was signed.

A. The present contract, I think, was signed at my room at —— street.

Q. You mean the contract of August 18th—the present contract?

A. The contract of August 18th; yes, sir.

Q. Was Major McCarroll present when that contract was signed, if you know?

A. I think he was.

Q. That contract of August 18th was signed how long before you entered into the quadruple agreement of the Scotch syndicate? I mean the one that was put in evidence the other day.

A. The preliminary contract of August 18th was signed one or two days before that, and then it was afterwards copied and
62 put in good shape, and that was the time I signed the present contract.

Q. On the 18th of August, I understand?

A. I think that was it.

Q. How long after did you sign the Scotch-syndicate contract?

A. I think it was the same day.

Q. At the same place?

A. Yes, sir; I know that the Scotch contract was signed there.

Q. You think both contracts were signed at the same place?

A. That is, the copy was signed a day or two before; that was the agreement, but it was recopied and put in shape.

Q. About raising the other $50,000, or 10,000 pounds, you say it was represented to you that they could raise that amount?

A. You asked me a question a few minutes ago. I told you who one syndicate was, and you asked me who represented the other syndicate; that was Mr. Holderman and Mr. Mulloney.

Q. Mulloney was really the representative?

A. That is about it. They are the Stanley syndicate—that is, what I call the Stanley syndicate.

Q. Mr. Rusk and the Birmingham people were unrepresented?

A. I do not know. Mulloney claimed that he did; represented that he raised the ten thousand pounds—the other ten thousand pounds. Just who the syndicate was I do not know.

Q. Was Mulloney present when the contract of the 18th of August was signed?

—. I think not; am not positive.

—. Mulloney, you say, promised to raise the other ten thousand pounds?

A. Yes, sir.

Q. What representations did he make about it?

A. Simply that he had arrangements already made, and that he

knew he could raise it—that he knew he could—he had it already raised. All he wanted was to get the titles to the property and get the company on a legal footing.

Q. On a legal footing?

A. Yes, sir.

63 Q. Did he tell you whom he expected to raise it from?

A. No, sir; no names only syndicates; that he had his parties. I think that was the way.

Q. Did anybody else tell you he could raise that money?

A. Yes, sir.

Q. Who?

A. Mr. Holderman.

Q. Did Holderman's persons have any knowledge of Mulloney's arrangements to raise the money?

A. Yes, sir.

Q. They had a previous understanding of it?

A. Yes, sir.

Q. Who else said anything to you that the money was certain to be raised, that ten thousand pounds?

A. No one, only Mr. Stanley. I had several talks with Mr. Stanley; he said that there was no doubt at all about it. This talk with Stanley was usually outside.

Q. Stanley was a man who lived in London?

A. Yes, sir.

Q. And these representations, which you state were made to you, in relation to raising the ten thousand pounds and the certainty of its being raised, to induce you to enter into the contract of August 18th—were these the representations of Malloney and the Holdermans and the conversations with Stanley?

A. Yes, sir; and I believe of Elder.

Q. Mr. Elder was there?

A. Yes, sir.

Q. What ground had Mr. Elder to believe any different from what you knew about it?

A. He was in consultation with them continually and supposed to know a great deal of their business that I did not.

Q. Do you know that Mr. Elder knew anything about their business at all?

A. No, sir; only what he told me.

Q. Did Mr. Elder ever tell you that he knew this money could be raised?

A. He believed it could; that there was no doubt about it.

64 Q. You said to him the other day that you thought you could produce, and if you could find you would produce, these two forms or telegrams in which you were to report the productions of the mine, when you went to working it under the contract of August 18th; have you got those forms with you?

A. I have not; I have looked for them and could not find them, and have written to Mr. Griffin, who had charge of all our papers, the book-keeper, to know what has become of them or where they are.

Q. Who prepared those forms?
A. I do not know, sir.
Q. Who delivered them to you?
A. I think Mr. Holderman, just as I was getting in the carriage to go away. I think it was Mr. Holderman. I cannot be positive about it.
Q. Who prepared that contract of August 18th; I mean who wrote it out—the one that was signed—the draft?
A. As far as I know, Maloney did.
Q. Now, didn't Maloney prepare these forms?
A. I don't know, sir; I never saw the forms or knew anything about it until getting into the carriage.
Q. You know Maloney's handwriting, don't you?
A. No, sir.
Q. You don't?
A. No, sir.
Q. Did you see these agreements he wrote?
A. I could not tell you.
Q. You say he prepared the agreements?
A. I think he prepared the agreements, but I think the contract was written by the clerk. I would not know Maloney's handwriting. I did not see him write it; they were written during the day, not in my presence, and brought to me by Elder to look over and see if I would accept them. I made such erasures as I did not like, and they were taken back again.
Q. I wish you would look at those documents (showing papers to witness) and see if they are not the forms, the two forms which I handed to you.
65 A. I could't tell because I never looked at them but once.
Q. Look them over and see if they are not?
A. I would naturally say they are, but I couldn't tell you.
Q. You say they are?
A. I would naturally say they are, but of course I cannot tell the wording of them—that is, the technical wording of them—but I have them in my mind as they before——
Q. Those telegrams or cable reports were to be sent, one of them by the Omaha and Grant Smelting Company and the other by Mr. Griffin, were they not?
A. I do not remember about—I know the Grant Smelter and the other I can't——
Q. Look at them and see if you don't recognize that the other was to be sent by Mr. Griffin?
A. I do not remember what the understanding was, particularly about it. I could not tell you, sir.
Q. These appear to be in that form, one for Griffin and the other the Omaha and Grant?
A. Yes, sir.
Q. That is the way those seem to be?
A. Yes; that is the way those are.

Documents referred to offered in evidence and marked "Exhibits D & E," hereto annexed.

Q. Will you state, Colonel, whether cables of these forms were sent to the company in London?

A. I couldn't without referring to them. I was not here when any of them were cabled; I was East.

Q. You cannot say whether they were or not?

A. No, sir; I don't think I was here only when one was sent—the last one. I believe I was here then; still I am not positive about that.

Q. Do you know whether any cable showing the quantity of milling ores taken out of the mine each week and left there on the dump were ever sent by Mr. Griffin to the company?

A. I should say there were; my impression is there were.

Q. Do you know anything about it?

A. No; I don't know without referring—the only way I can
66 say is to refer to the copies and so on.

Q. Were those cables of the product of the ores produced at the mines and reduced at the Grant smelter cables of each week's production separately?

A. Were they sent separately?

Q. Was the production of the mine during each separate week separately cabled by the Grand Smelting Company to the company at home?

A. I could not tell you; I should think they were; that is my understanding of it. Whether it was a car-load a week or not I could not tell you without referring——

Q. What I want to know is whether each week was kept distinct by itself—so much produced one week, so much the next—or whether the shipments were the aggregate, running over one week to another, during the period of several weeks there so represented?

A. I think it was every week.

Q. You don't know of your own knowledge anything about these things?

A. No, sir. I have a copy of them—Mr. Griffin has, the bookkeeper.

Q. You had copies of them from where?

A. I don't know. I was not here, I think.

Q. These are copies from——

A. The original grants?

Q. Copied from the office down there?

A. Of course, I don't know because I was not here. I know in a general way it was carried out according to instructions—at least I suppose it was.

Q. Were not you immediately notified by cable from the company, either directly or through me, I forget which, that the cables being sent were not in accordance with the contract?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Q. What was the objection which the company raised to these cables?

A. I couldn't tell you. I claim that they were sent according to the agreement. What the point was at issue with them I
67 don't remember now.

Q. What are the forms?

A. I don't remember what the point at issue was; I just took it in this way, that it was simply a matter of trickery on their part

Q. Was it not, Colonel, that they received no cables from Mr. Griffin as to the amount of ores—milling ores, as they call it, I believe—taken out each week and stored on the dump?

A. I could not tell you without referring——

Q. What is your best remembrance about it?

A. I think they were sent.

Q. I am asking now what the objection raised in the company was?

A. I don't know; I don't remember. I knew at the time, but don't remember now.

Q. Wasn't it stated at the time that that was the objection which they raised to these cables?

A. Yes; that was part, but I claimed that they were sent.

Q. And wasn't another objection, which was raised at that time, that it didn't appear from the smelter's — were the reports of the production from the mine during each separate week?

A. No, sir.

Q. That was not?

A. No, sir; there was never anything of the kind presented to me.

Q. You said in your direct examination that you had telegrams or cablegrams from time to time that the money would be paid, and that you kept carrying the things along until your patience was exhausted. From whom did you receive these cablegrams or information to that effect?

A. From Mr. Elder and Mr. Richmond.

Q. From Mr. Elder and Mr. Richmond?

A. Yes, sir; I mean one from him with his signature to it.

Q. In what capacity was Mr. Elder acting over there during these negotiations?

68 A. Mr. Elder was acting as the counsel and friend of mine in connection with the deal—in — what we might call a middle man, I believe, in this country.

Q. Was he or was he not your agent, engaged in endeavoring to negotiate the sale?

A. As far as I have said there.

Q. He was your agent?

A. He was an agent as far as I have said—adviser—and supposed to be the middle-man. There was no written contract to do anything at all.

Q. Supposed to be the middle-man between whom?

A. Mr. Haldeman and myself.

Q. He was acting for you, however, and not for Mr. Heldeman?

A. He was acting for both.

Q. He was acting for both?

A. Just to explain, the position I would give a middle-man would be simply that he had powers and contracts to negotiate this property; but Mr. Elder had no powers or anything of that kind, but was just simply an adviser with me in connection with it.

Q. Didn't you understand, Colonel, that Mr. Elder was acting solely in your interests? Wasn't it your understanding all the time, from first to last?

A. No, sir; I considered Mr. Elder simply as an adviser in connection with this deal, and that his efforts and through his efforts—at least he asked for this property for his friends; and I have known Mr. Elder for years, believed in him fully, and intrusted the negotiation of this thing to him.

Q. You believe in him yet, don't you?

A. Yes, sir.

Q. Did you understand that Mr. Elder was the agent of Mr. Haldeman to buy this property of you just as cheap as possible and pay you just as little money as possible and get the whole of this title without seeing that you, so far as he could——

A. By it, the August 18th contract, I considered Mr. Elder in the negotiation acting the same for me as he was for them.

69 Q. Who were the parties that you met in Paris on the 5th of October, at the time of that last proposition of yours which was accepted?

A. Mr. William Brown, of Glasgow, Scotland.

Q. Anybody else?

A. No, sir, but Mr. Elder.

Q. In that negotiation for the three thousand Griffin's name was signed?

A. I am talking now——

Q. Mr. Elder was present and Mr. Griffin and Mr. Brown and yourself?

A. Yes, sir.

Mr. TELLER: Was Griffin present?

A. Yes, sir.

Q. Was there anything said about where or who was furnishing the thirty-five hundred pounds?

A. It was supposed by me, and I think it was talked over by them, that Mr. Wilson was—Colonel Wilson.

Q. That is the man whom you said the other day did furnish it, as you were advised?

A. Yes, sir; I am not positive, but I supposed Mr. Wilson.

Q. You said that Mr. Elder advised you to sign that quadruple contract which was entered into with the Scotch syndicate. What reasons, if any, did Mr. Elder give you why he thought that it would be for your advantage to sign that contract?

A. I asked Mr. Elder if he thought I had better sign that contract, if it was his advice to sign it, and he said that it was.

Q. Did he give any reasons?

A. He said that it was for the best interests of all concerned in it.

Q. Did he say why it was for their best interests?

A. No; he did not.

Q. Did he not tell you you had better get ten thousand pounds and get these men interested in the property?

A. I knew that as well as he did. I don't think there was any conversation connected with it.

Q. Didn't you and he discuss it in that light?

A. Probably we did; I think we did.

70 Q. And that if this fell through you would have these Scotch parties in it, and they were good, strong men and good men to have in, and if the other ten thousand pounds was not paid you had some good, strong men interested with you in the property?

A. I think we did. I know it was my opinion.

Q. You said you never met Mr. Rusk until you met him in Denver, when he came out with Major McKerrell or soon after, and that you made a proposition to pay him a hundred thousand and give him forty-five thousand shares on account of what he had paid?

A. I did not make any such statement.

Q. I will read it over here, Colonel.

A. Then they have made a mistake in taking it.

Mr. DIXON reads from the copy.

Q. This proposition which you spoke of, which you made to him for the one hundred thousand dollars, was it one hundred thousand dollars and was it in addition to that that he should raise the other fifty thousand dollars?

A. That is the way.

Q. You spoke——

A. That is the way it should have been stated, but these little things slip my mind in writing.

Q. You spoke about putting fifty thousand dollars out in the August 18th contract?

A. Yes, sir.

Q. The fifty thousand dollars—that if he would raise the other fifty thousand dollars you would then give him forty-five thousand shares?

A. No, sir; it was nothing about forty-five thousand shares; it was a certain amount of stock—ninety thousand, I think—he wanted I would give him if he would raise the other fifty thousand.

Q. You have not said anything here about ninety thousand in your direct examination?

A. No; I know I did not.

Q. I want to know what the number of shares was that he was to get in consideration of the money and which he said was

71 liable to be all forfeited or lost?

A. Forty-five thousand shares.

Q. And the other, the balance of ninety thousand, was in consideration of the advance of the further sum of fifty thousand dollars?

A. Yes; with the settlement with Haldeman and Maloney.

Q. You said that you were getting tired of waiting and decided to go over and cabled that you were going to Richmond and Elfer?

A. Yes, sir.

Q. And that they replied that it would be suicidal for you to go there?

A. Yes, sir.

Q. For what reason?

A. I couldn't tell you, sir, what reasons they had.

Q. Did they ever give you any reason at all?

A. They may have given me an oral reason. I don't remember when I saw them whether they did or not; my impression is that they cabled reasons afterwards; still I will not be positive about it.

Q. What were those reasons?

A. I don't know. I can't tell. I don't remember now what they were?

Q. Richmond returned?

A. Yes, sir.

Q. You met him in St. Louis?

A. Yes, sir.

Q. Did he bring any propositions with him on his return there to lay before you and Mr. Sanderson?

A. He brought the basis of a proposition.

Q. He brought the basis of a proposition?

A. Yes, sir; not the proposition; it was a basis for me to make a proposition on; not a proposition, we would say, but a basis for me to make a proposition.

Q. A basis for you to make a proposition?

A. Yes, sir.

Q. Any more than one basis? Was there some alternatives?

A. I am not positive about that. I think there were. It was not anything that I would take into consideration at all, so
72 I did not — is the whole basis was not; of course, there were points in it that I did.

Q. State whether Mr. Richmond then returned to England again.

A. Yes, sir; he did.

Q. Immediately?

A. Yes, sir.

Q. You sent him back there—you and Mr. S-nderson?

A. Yes, sir; we consented to his going back.

Q. Did you give him any? You say that you did not consent to this basis or any of them.

A. We did not make any.

Q. You did not make any proposition, but sent him back there without any definite proposition from yourself?

A. I did make a proposition.

Q. Upon which you sent him back?

A. No, sir; we made a proposition, I think, and cabled it over.

Q. You said Mr. Haldeman was a director of the company at the time the 18th of August contract was signed?

A. Yes, sir.

Q. Do you know that?

A. I know it from the papers I saw in connection with it; that is all; they told me.

Q. Don't you know he could not be a director of the company at that time?

A. I did not, sir; it was *it* the incorporation papers.

Q. You met Harry Edward Gilbert?

A. Yes, sir; I guess so. A man by the name of Gilbert.

Q. Did you meet him more than once?

A. I never met him more than once to speak to him.

Q. When was that?

A. In my room, the evening I left.

Q. What was he doing there?

A. He came up there, perhaps, to witness, I think, the contracts that I signed or something in connection with the contracts. He was secretary of the company—that is, I understood he was. I used to see him in the office, No. 38 Jur*t* street, but I was never in-
73 troduced to him, and I did know what his name was.

Q. That seventy-five thousand shares of stock mentioned in the quadruple agreement of the Scotch syndicate—were they ever delivered?

A. I gave an order to have them delivered; I could not state whether they were delivered or not; Mr. Elder and myself.

Q. The three hundred and seventy-five thousand shares deposited with Wells, Fargo & Company or Ives and Allen were deposited upon the condition that they were to remain there, except the whole or any portion was delivered upon the joint order of yourself and Mr. Elder?

A. Yes, sir.

Q. The joint order of yourself and Elder?

A. Yes, sir; that is my understanding.

Q. And is that the order you and Elder gave to Ives and Allen?

A. Yes, sir.

Redirect examination by Mr. Teller.

Q. Did Mr. Heldeman at any time, to your knowledge, object either to the amount that was cabled over there under the contract of August 18th or the form in which it was cabled?

A. Mr. Haldeman never did. I do not remember ever receiving any from him at all.

Q. Did you ever cable to Mr. Haldeman, about September 23, 1887, in respect to this matter in about these works: "Have cabled eight hundred dollars, more than contract called. Has London syndicate paid two thousand pounds per agreement? If not, expect it will." Did you cable to him something of that kind?

A. I think that was cabled to Mr. Elder.

Q. Look at that and see if you can find the copy of the telegram that was sent September 22nd?

A. Yes, sir.

Q. Have you got the telegram there?

A. I have got a copy of it.

Q. That you telegraped to Haldeman? Did you on that date, September 23d, 1887?

A. Yes, sir.

74 Telegram offered in evidence and marked "Exhibit C," hereunto annexed.

Q. Who is Galluck? Do you know anybody by that name?

A. The postal address of the Slide and Spur.

Q. Look and see if you have got a telegram that was sent to Galluck November 2, 1887, or a copy of it?

A. Yes, sir.

Q. Produce it.

Copy of telegram of November 2d, 1887, offered in evidence and marked "Exhibit F," hereto attached.

By Mr. DOXON: Was this in answer to a telegram sent *sent* by Galluck?

A. I think not, sir. I would not be positive; but I think not.

Q. Now, to either of these telegrams, did you ever have any complaint, in answer to either of these telegrams, from Haldeman that the money had not been sent according to contract, or as you stated has been in these telegrams?

A. The money was not to have been sent at all. I say now I do not think I have.

Q. You say Mr. Elder was acting as a middle-man between you. Did he or did he not seem to keep you advised as to what was going on in respect to the purchase of this property as well as any plans that were made at that time?

A. Yes, sir.

Q. Did Mr. Elder at any time give you any notice as to any part of these reports not being made in accordance with the contract?

A. Yes, sir.

Q. When and what did he state were the objections?

A. That they were not in accordance with the forms sent.

Q. What do you mean by the forms?

A. The form that they handed me as I was leaving London—the cable form.

Q. Was there any objection made that the amount was not sufficient?

A. No, sir.

75 Q. Did you report the amounts mentioned in the contracts that should be reported?

A. Yes, sir—that is, the Grant Smelter did.

NOV. 7TH.

J. FENTON SEYMOUR recalled and re-examined for the complainants.

Q. Were you consulted at any time before the board was reorganized, in June, 1886, in respect to your being made a member of the board?

A. Only by Mr. Richmond, on his visit from London to St. Louis, in making a proposition, as requested by letters and instruction that Mr. Richmond brought with him, for us to make a final settlement. The letters were letters of request, not of instruction, from Mr. Rust, Col. Wilson, and Mr. Brown; I think one from Mr. Johnson. We made a proposition, in the shape of a power of attorney, that I should be made a director if the proposition should be carried out in accordance with the power of attorney. It was agreed by Mr. Richmond and myself that I should have nothing to do with the board of directors unless the proposition in the power of attorney was carried out. The proposition in the power of attorney was never carried out or accepted.

Recross-examination:

Q. I show you a telegram dated the 23 day of June, 1885, which reads, "Been with Scotch, Rust, all week; board changed; Seymour, director; Wilson, chairman; sail New York Thursday; see Moffat to-morrow," and ask you if you received that cable or telegram?

A. I did.

Q. After receiving that cable did you ever in any manner dissent from acting as director or notify the company on the other side or any of its officers or Mr. Elder that you declined or refused so to act?

A. Yes, sir.

Q. Whom did you so notify and when?

76 A. I notified Mr. Elder, when I saw him, that I should not act as director until this thing was settled.

Q. When did you see Mr. Elder, and where, and in whose presence did you so notify him?

A. Some time in July, 1888, in New York. If it was in the presence of any person it was in the presence of H. C. Griffin, my bookkeeper. I also notified Mr. Elder verbally, in Paris, August, 1888, that I would not serve nor meet with the directors until a satisfactory settlement was made.

Q. Did you at any time give like notice to any other person?

A. I don't think I did; I don't know.

Q. Did you not afterwards, and on or about the 5 of October, 1888, under the rules and by-laws of the company, accept the office or position of managing director of the company's mining properties here in Colorado?

A. No, sir; I made a proposition to do so about October 5, and on the 11 of December, or about that time, my proposition was accepted and I became managing director of the company here in Colorado. This proposition is the one stated, too, in the proceedings.

J. FENTON SEYMOUR.

Subscribed and sworn to before me this 20th day of November, A. D. 1889.

ANDREW W. BRAZEE, *Examiner.*

EXHIBIT A.. A. W. B.

Minute of an agreement between J. Fenton Seymour and Clarence Preston Elder, both of Denver, United States of America, and Robert Mure McKerrell, of Hillhouse, Ayrshire, and William Brown, solicitor, Hamilton, Lanarkshire.

77 Whereas, by an agreement made on the eighteenth day of August, eighteen hundred and eighty-seven, between the said J. Fenton Seymour, for himself and others, owners of the Slide and Spur Gold Mines, in Boulder county, Colorado, United States of America, of the one part, and John Haldeman, of 38 Old Jewry, London, of the other part, it is stipulated and agreed that three hundred and seventy-five thousand fully paid up shares, of one pound each, of and in the Slide and Spur Gold Mines, Limited, are to be issued by the said company to the aforesaid John Haldeman in payment in full for the said mines against a clean transfer of the property to the company, free of all incumbrances and liabilities whatsoever, and the due registration of the said transfer, and which shares are immediately, upon the same being so issued to be transferred to the said Clarence Preston Elder, a director of the company, as trustee for behoof of all concerned, and the said shares are to be then deposited with Wells, Fargo & Company, merchants, London, in the name of the said Clarence Preston Elder, as a guarantee for the fulfillment by the said John Haldeman of the terms of said agreement so far as incumbent upon him, all as fully set forth in the said agreement:

Now, it is hereby specially covenanted and agreed that, notwithstanding the terms of the aforesaid agreement, seventy-five thousand fully paid shares, of one pound each (being No. 300,001 to 375,000, inclusive), of the said total number of three hundred and seventy-five thousand shares shall be held by the said Clarence Preston Elder and the said Wells, Fargo & Company for and on account of the said Robert Mure McKerrell and William Brown, and the said seventy-five thousand shares shall be delivered and transferred to them or their nominees immediately upon the cash payment mentioned in the aforesaid agreement being received by the said J. Fenton Seymour or his heir- and successors or his or their agent; and, further, it is hereby specially provided and agreed that in the event of the terms of the aforesaid agreement not being implemented
78 by the said John Haldeman, and in consequence thereof the said shares deposited with Wells, Fargo & Company or part thereof becoming claimable by or on account of the said J. Fenton Seymour or his heirs or successors, yet, nevertheless, the said seventy-five thousand shares in that event shall be forthwith delivered and duly transferred by the said Clarence Preston Elder and Wells, Fargo and Company to the said Robert Mure McKerrell and William Brown or their nominees notwithstanding any failure on the part of the said John Haldeman to implement the said agreement or any portion of the same.

In testimony whereof this agreement is subscribed by the parties hereto, all at London, on the nineteenth day of August, in the year eighteen hundred and eighty-seven.

J. F. SEYMOUR. [SEAL.]
CLARENCE P. ELDER. [SEAL.]
BOBERT MURE McKERRELL, [SEAL.]
Of Hillhouse.
WM. BROWN. [SEAL.]

Signed, sealed, and delivered by the aforesaid J. Fenton Seymour and Clarence Preston Elder and Robert Mure McKerrell and William Brown in the presence of—

H. E. GILBERT,
Secretary Slide & Spur Gold Mines, L'd, 38 Old Jewry, London.

EXHIBIT B. A. W. B.

Know all men by these presents that I, J. L. Sanderson, for myself, and J. F. Seymour, for myself and as attorney-in-fact for L. & R. Seymour and W. G. Pell, do hereby constitute, make, and appoint Hon. Clarence P. Elder and G. Q. Richmond our true and lawful attorneys-in-fact, for us and in our name, place, and stead, hereby authorizing the said Elder and Richmond to make full and complete settlement and compromise with John Haldeman and others who have or may claim any interest in and to any shares of stock of the Slide & Spur Mining Company, Limited, of or in the Slide & Spur Mines; to transfer and deliver any and all shares of stock of the Slide and Spur Mines, Limited, as to them may seem best and prudent for our interests—

We hereby authorizing our said attorneys to withdraw from the possession of Ives & Allen or Wells, Fargo & Company, London, all of said shares of stock upon the payment of one hundred and sixty thousand dollars ($160,000) cash, payable to order of said Wells, Fargo and Company, as per contract, January 18th, 1887.

79

We also authorize our said attorneys to contract for transfer of the possession and management of said Slide and Spur Mines to Slide & Spur Mining Company, Limited, upon the payment of said sum of one hundred and sixty thousand dollars ($160,000), as above set forth, hereby ratifying and confirming all that our said attorneys may do or cause to be done in the premises, it being understood that the power of substitution is not vested in said attorneys, and that they shall act jointly in the execution of the powers vested in them.

Witness our hands and seals this 20th day of February, A. D. 1888.

——.
——.

EXHIBIT D. A. W. B.

The Direct United States Cable Company, Limited.

Head stations (always open).	London: 34 Throgmorton street, E. C. Liverpool: D 6, Exchange building. New York: 40 Broadway.	No. of message, ——.
Branch stations in London.	Southsea House, adjoining "The Baltic," Threadneedle street, E. C. East India avenue, Leadenhall street, E. C. The Commercial sale-rooms, Mincing Lane, E. C.	
Provincial stations.	Bristol: Back Hall Chambers, Baldwin street. Glasgow: 29 Gordon street.	

(Office stamp.)

	Words.	How paid.
Prefix ----------	Add's----------	Cash ----------
Code ----------	Text----------	Stamps ----------
Sent at ----------	Instr'ns----------	
To ----------		——
By ----------	Total------	Total------

Service instructions.

Form for Message "Via Direct Cable" for the United States of America, Canada, West Indies, and Central and South America.

From —— ——

To Slide & Spur Co., London.

Have stacked
tons milling ore.

GRIFFIN.

To prevent mistakes, attention is called to the importance of legible writing.

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it
80 is originally sent. A quarter of the original cost for transmission is charged in addition for such repetition.

Conditions.—The company may decline to forward the message, though it has been received for transmission; but in case of so doing shall refund to the sender the amount paid for its transmission.

In case the message shall never reach its destination by reason of any neglect or default of the company or its servants whilst the message remains under the control of the company they will refund the amount paid by the sender for such message.

The company shall not be liable to make compensation beyond

the amount to be refunded as above for any loss, injury, or damage arising or resulting from the non-transmission or non-delivery of the message or delay or error in the transmission or delivery thereof, howsoever such non-transmission, non-delivery, delay, or error shall have occurred.

The control of the company over the message shall be deemed to have entirely ceased for the purposes of these conditions at any point where, in the course of the transit of the message to its destination, it may be entrusted by the company (and the company shall have full power so to entrust the message) for further transmission by or through any system, service, or line of telegraph belonging to or worked by any administration or authority not controlled by the company exclusively, although worked as part of or in connection with the telegraphic system or service of the company.

Having read the foregoing conditions I hereby request that the above message be telegraphed to its destination, as above, according to the said conditions, and be transferred to the Direct United States Cable Company, Limited, to be forwarded by the cables of that company subject in all respects to the aforesaid conditions, by which I agree with the said company to be bound and abide.

The name of the place from which messages originate is transmitted free of charge.

No to be telegraphed. { Signature: —— ——.
Address: —— ——.

P. T. O.

The Direct United States Cable Company, Limited.

Notice.

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent. Quarter of the original cost for transmission is charged for such repetition.

The name of the place from which messages originate is transmitted free of charge.

Telegrams for this company's cables handed in at postal telegraph offices must be marked "via direct cable." This instruction is signalled free of charge.

(For use of G. P. O.)

		£ s. d.
	Telegram	
	Repetition	
	Notice of delivery	
	Reply	
81	Excess in reply paid	
	Extra copies	
	Redirection	
	Porterage	
	Special charges	
	Total	

EXHIBIT E. A. W. B.

The Direct United States Cable Company, Limited.

Head stations (always open).	London: 34 Throgmorton street, E. C. Liverpool: D 6, Exchange building. New York: 40 Broadway.	No. of message, ——.
Branch stations in London.	Southsea House, adjoining "The Baltic," Threadneedle street, E. C. East India avenue, Leadenhall street, E. C. The Commercial sale-rooms, Mincing Lane, E. C.	
Provincial stations.	Bristol: Back Hall Chambers, Baldwin street. Glasgow: 29 Gordon street.	

(Office stamp.)

	Words.	How paid.
Prefix ----	Add's ----	Cash ----
Code ----	Text ----	Stamps ----
Sent at ----	Instr'ns ----	
To ----		
By ----	Total ----	Total ----

Service instructions.

To prevent mistakes, attention is called to the importance of legible writing.

Form for Message "Via Direct Cable" for the United States of America, Canada, West Indies, and Central and South America.

From —— ——

To Slide & Spur Co., London.

Have received

tons ore value

dollars.

OMAHA & GRANT SMELTING CO.

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent. A quarter of the original cost for transmission is charged in addition for such repetition.

Conditions.—The company may decline to forward the message, though it has been received for transmission; but in case of
82 so doing shall — to the sender the amount paid for its transmission.

In case the message shall never reach its destination by reason of any neglect or default of the company or its servants whilst the message remains under the control of the company they will refund the amount paid by the sender for such message.

8—1459

The company shall not be liable to make compensation beyond the amount to be refunded as above for any loss, injury, or damage arising or resulting from the non-transmission or non-delivery of the message or delay or error in the transmission or delivery thereof, howsoever such non-transmission, non-delivery, delay, or error shall have occurred.

The control of the company over the message shall be deemed to have entirely ceased for the purposes of these conditions at any point where, in the course of the transit of the message to its destination, it may be entrusted by the company (and the company shall have full power so to entrust the message) for further transmission by or through any system, service, or line of telegraph belonging to or worked by any administration or authority not controlled by the company exclusively, although worked as part of or in connection with the telegraphic system or service of the company.

Having read the foregoing conditions I hereby request that the above message be telegraphed to its destination, as above, according to the said conditions, and be transferred to the Direct United States Cable Company, Limited, to be forwarded by the cables of that company subject in all respects to the aforesaid conditions, by which I agree with the said company to be bound and abide.

The name of the place from which messages originate is transmitted free of charge.

Not to be telegraphed. { Signature: ——— ———.
Address: ——— ———.
(P. T. O.)

The Direct United States Cable Company, Limited.

Notice.

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent. Quarter of the original cost for transmission is charged for such repetition.

The name of the place from which messages originate is transmitted free of charge.

Telegrams for this company's cables handed in at postal telegraph offices must be marked "via direct cable." This instruction is signalled free of charge.

(For use of G. P. O.)

	£ s. d.
Telegram	
Repetition	
Notice of delivery	
Reply	
Excess in reply paid	
Extra copies	
Redirection	
83 Porterage	
Special charges	
Total	

EXHIBIT C. A. W. B.

DENVER, *Sept.* 23, '87.

Haldeman:

Have cabled eight hundred dollars more than contract calls for. Has London syndicate paid ten thousand pounds, per agreement? If not, expect it will.

SEYMOUR.

No. 3.

EXHIBIT F. A. W. B.

The Western Union Telegraph Company.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays, the sender of a message should order it repeated—that is, telegraphed back to the originating office for comparison. For this, one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same, or for **Cablegram.** mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk and payment of premium thereon, at the following rates in addition to the usual charge for repeated messages, viz: One per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance. No employee of the company is authorized to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater
84 distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages in any case where

the claim is not presented in writing within sixty days after sending the message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Receiver's No.	Time filed.	Check.

Send the following message subject to the above terms, which are hereby agreed to:

Nov. 2, 1887.

To Geluk, London:

Have filled our part contract; stopped producing; still developing; report last week's production to-morrow.

SEYMOUR.

Read the notice and agreement at the top.

EXHIBIT G. A. W. B.

The Direct United States Cable Company, Limited.

Head stations (always open): London: 34 Throgmorton street, E. C. / Liverpool: D 6, Exchange building. / New York: 40 Broadway. — No. of message, ——.

Branch stations in London: Southsea House, adjoining "The Baltic," Threadneedle street, E. C. / East India avenue, Leadenhall street, E. C. / The Commercial sale-rooms, Mincing Lane, E. C.

Provincial stations: Bristol: Back Hall Chambers, Baldwin street. / Glasgow: 29 Gordon street.

(Office stamp.)
Oct. 12, '87.

	Words.	How paid
Prefix ----------	Add's ----------	Cash ----------
Code ----------	Text ----------	Stamps ----------
Sent at ----------	Instr'ns ----------	
To ----------		
By ----------	Total ----------	Total ----------

To prevent mistakes, attention is called to the importance of legible writing.

Service instructions.

Form for Message "Via Direct Cable" for the United States of America, Canada, West Indies, and Central and South America.

From —— ——

To Seymour, Denver, Colorado.

Grants		returns.
must	state	tons
and	values	else
won't	count	

ELDER.

85 For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent. A quarter of the original cost for transmission is charged in addition for such repetition.

Conditions.—The company may decline to forward the message, though it has been received for transmission; but in case of so doing shall refund to the sender the amount paid for its transmission.

In case the message shall never reach its destination by reason of any neglect or default of the company or its servants whilst the message remains under the control of the company they will refund the amount paid by the sender for such message.

The company shall not be liable to make compensation beyond the amount to be refunded as above for any loss, injury, or damage arising or resulting from the non-transmission or non-delivery of the message or delay or error in the transmission or delivery thereof, howsoever such non-transmission, non-delivery, delay, or error shall have occurred.

The control of the company over the message shall be deemed to have entirely ceased for the purposes of these conditions at any point where, in the course of the transit of the message to its destination, it may be entrusted by the company (and the company shall have full power so to entrust the message) for further transmission by or through any system, service, or line of telegraph belonging to or worked by any administration or authority not controlled by the company exclusively, although worked as part of or in connection with the telegraphic system or service of the company.

Having read the foregoing conditions I hereby request that the above message be telegraphed to its destination, as above, according to the said conditions, and be transferred to the Direct United States Cable Company, Limited, to be forwarded by the cables of that company subject in all respects to the aforesaid conditions, by which I agree with the said company to be bound and abide.

The name of the place from which messages originate is transmitted free of charge.

No to be telegraphed. { Signature: ——. Address: ——.

P. T. O.

The Direct United States Cable Company, Limited.

Notice.

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent. Quarter of the original cost for transmission is charged for such repetition.

The name of the place from which messages originate is transmitted free of charge.

Telegrams for this company's cables handed in at postal telegraph offices must be marked "via direct cable." This instruction is signalled free of charge.

(For use of G. P. O.)

		£ s. d.
85½	Telegram	
	Repetition	
	Notice of delivery	
	Reply	
	Excess in reply paid	
	Extra copies	
	Redirection	
	Porterage	
	Special charges	
	Total	

86 EXHIBIT H. A. W. B.

Elder. The Direct United States Cable Company, Limited.

Head stations (always open): London: 34 Throgmorton street, E. C. / Liverpool: D 6, Exchange building. / New York: 40 Broadway. — No. of message, ——.

Branch stations in London: Southsea House, adjoining "The Baltic," Threadneedle street, E. C. / East India avenue, Leadenhall street, E. C. / The Commercial sale-rooms, Mincing Lane, E. C.

Provincial stations: Bristol: Back Hall Chambers, Baldwin street. / Glasgow: 29 Gordon street.

(Office stamp.)
Friday, Sept. 23, '87.

	Words.	How paid.
Prefix	Add's	Cash
Code	Text	Stamps
Sent at	Instr'ns	
To		
By	Total	Total

To prevent mistakes, attention is called to the importance of legible writing.

Service instructions.

Form for Message "Via Direct Cable" for the United States of America, Canada, West Indies, and Central and South America.

From —— ——

To Seymour, Denver.

Increase	quantity	weekly
	Reports	not
made direct	Company	
harms	you	
gives	extra	time
London	see	agreement

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent. A quarter of the original cost for transmission is charged in addition for such repetition.

Conditions.—The company may decline to forward the message, though it has been received for transmission; but in case of so doing shall refund to the sender the amount paid for its transmission.

In case the message shall never reach its destination by reason of any neglect or default of the company or its servants whilst the message remains under the control of the company they will refund the amount paid by the sender for such message.

The company shall not be liable to make compensation beyond the amount to be refunded as above for any loss, injury, or damage arising or resulting from the non-transmission or non-delivery
87 of the message or delay or error in the transmission or delivery thereof, howsoever such non-transmission, non-delivery, delay, or error shall have occurred.

The control of the company over the message shall be deemed to have entirely ceased for the purposes of these conditions at any point where, in the course of the transit of the message to its destination, it may be entrusted by the company (and the company shall have full power so to entrust the message) for further transmission by or through any system, service, or line of telegraph belonging to or worked by any administration or authority not controlled by the company exclusively, although worked as part of or in connection with the telegraphic system or service of the company.

Having read the foregoing conditions I hereby request that the above message be telegraphed to its destination, as above, according to the said conditions, and be transferred to the Direct United States Cable Company, Limited, to be forwarded by the cables of that company subject in all respects to the aforesaid conditions, by which I agree with the said company to be bound and abide.

The name of the place from which messages originate is transmitted free of charge.

Not to be telegraphed. { Signature: ELDER.
Address: 1 Craven St. (P. T. O.)

The Direct United States Cable Company, Limited.

Notice.

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent. Quarter of the original cost for transmission is charged in addition for such repetition.

The name of the place from which messages originate is transmitted free of charge.

Telegrams for this company's cables handed in at postal telegraph offices must be marked "via direct cable." This instruction is signalled free of charge.

(For use of G. P. O.)

	£ s. d.
Telegram	
Repetition	
Notice of delivery	
Reply	
Excess in reply paid	
Extra copies	
Redirection	
Porterage	
Special charges	
Total	

88 EXHIBIT J. A. W. B.

The Western Union Telegraph Company.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages beyond **307** the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after sending the message.

This is an unrepeated message and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Number.	Sent by—	Rec'd by—	Check.
233 Ks	O	2	337. 138 pd 1 ex in adds.

Received at 1314 16th street, Denver, Colo., — m. standard time, Oct. 22, 188–.

Dated London, via New York, 22.
To J. Fenton Seymour.

Mulloney has grossly deceived his Birmingham people this has brought the whole of the Scotch and Birmingham people together, Mulloney and all his crew have been thrown overboard the Scotch and Birmingham people are in full accord and have come to a complete understanding and it is the desire of both parties that Birmingham people be placed upon same footing as Scotch. This gives us a stronger backing amongst monied men and gets rid of all shysters even Haldeman if present contract not fulfilled enabling me upon forfeiture to place shares even more advantageously with Scotch and Birmingham direct Brown added to board and Colonel Wilson will join as deputy chairman upon your accepting above conditions if accepted cable me at once so I can complete all arrangements before chairman leaves in a week for America.

ELDER.

No. 18.

EXHIBIT K. A. W. B.

Cable Message.

The Western Union Telegraph Company.

All cable messages received for transmission must be written on the message blanks provided by this company for that purpose under and subject to the **291** conditions printed thereon and on the back hereof, which conditions have been agreed to by the sender of the following message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

89 Number.	Sent by—	Rec'd by—	No. of words.	From—
W 3063 Ks	K ME	13, London.		

Received at Denver Sept. 30, 1887.
To Seymour, Denver (Colo.).
9—1459

Shares deposited strict accordance agreement all parties satisfied write fully.

ELDER. 2.45 p. m.

To guard against mistakes on the lines of this company, the sender of every message should order it repeated—that is, telegraphed back from the terminus of said lines to the originating office. For such repeating the sender will be charged in addition one-half the usual tolls of this company on that portion of its lines over which such message passes.

This company will not assume any responsibility in respect to any message beyond the terminus of its own lines, and it is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in transmission or delivery or for non-delivery to the next connecting telegraph company of any unrepeated message beyond the amount of that portion of the charge which may or shall accrue to this company out of the amount received from the sender for this and the other companies by whose lines such message may pass to reach its destination, and that this company shall not be liable for mistakes in the transmission or delivery or for non-delivery to the next connecting telegraph company of any repeated message beyond fifty times the extra sum received by this company from the sender for repeating such message over its own lines, and that this company shall not be liable in any case for delays arising from interruptions to the workings of its lines, nor for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company to reach its destination.

This company is not to be liable for damages in any case where the claim is not presented in writing within thirty days after the sending of the message.

No. —.

EXHIBIT L. A. W. B.

The Western Union Telegraph Company.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays the sender of a message should order it repeated—that is, telegraphed back to the originating office for comparison. For this one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially
90 insured, nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher

or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk and payment of premium thereon at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance. No employee of the company is authorized to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Receiver's No.	Time filed.	Check.

Send the following message subject te the above terms, which are hereby agreed to:

OCT. —, 1887.

To Elder, one Craven St., London:

English have not done as agreed, we have done more. Will until Nov. first must then forfeit we will protect Scotchman as agreed Tired of English *triffling.*

SEYMOUR.

Read the notice and agreement at the top.

OCT. 15.

Deposition of GEORGE WOODGATE HUTCHINSON, a witness produced on behalf of the complainant, and being duly sworn and interrogated by counsel, testified as follows:

Q. What is your name, age, place *and* residence, and occupation?

A. My name is George Woodgate Hutchinson; age, fifty-four; agent for the Slide and Spur Gold Mining Company, Limited; residence, Denver, Colorado. I am not secretary of the defend-
91 ant company. I was secretary from the beginning of September, 1887, to the 17th of November, 1888. The directors, when I became secretary, were Robert McCarroll, Mr. Pollock, Col. Steele, John Holderman, and Mr. Elder. John Holderman ceased to be a director at the time Col. Seymour was appointed a
92 director in his stead, which was in April, 1888. I ceased to be a director early in June, 1888, though I cannot tell the exact time. The gentlemen I have named composed the board of directors of the company on the 18th day of August, 1887. They were Major McCarroll, Mr. Pollock, Steele, and Halderman, though Holderman was not a director then. Holderman did not take his seat at the board until the 10th of September, 1887. He being a party to the contract, he could not take a seat. I am speaking from the minutes of the books and the statement in the prospectus. The present secretary is William J. Moore, of Thompson building, London. While I was secretary of the company the treasurer of the company was the directors, and they had no other treasurer at that time.

There was paid in on stock, to my knowledge, the proceeds of 1,257 shares subscribed by the public, and that represents twelve hundred and fifty-seven pounds, and there was about two hundred odd pounds of forfeited money besides. That is all the — paid into the treasury at that time. I was secretary of the company when this 375,000 shares of stock was signed and issued, and I signed it as secretary. No money was passed at that time. It was issued for the full price of the mine. The stock was given for the mine. I don't know anything about its being issued for the purpose of enabling Mr. Holderman to buy the property. It was issued to Mr. Holderman on the 10th of September, 1887, at a board meeting, when the Gilbert agreement was brought before the board and not adopted, but the solicitor of the company attended the meeting and registered the modified agreement. The modified agreement was brought back to the solicitor of the company, and was by the board adopted. The issue of the shares was given and a transfer made at the same time by Mr. Elder. What I mean by registering the con-
tract is that all contracts of the incorporation of a joint-stock
93 company have to be registered, and every agreement has to be made a matter of record. When I speak of this 10th of September agreement I mean this agreement set up on page nine of the answer. The agreement was recorded on the 10th of September—I mean the agreement by which the agreement made on the 16th of May between Holderman and Gilbert was declared to be modified. After that deed was made the stock was issued. It was issued after the 10th of September and after the registration of the agreement I have just spoken of. The stock was issued directly to Mr. Holderman and placed in his hands without any money being paid by Mr. Holderman.

It is hereby stipulated that the testimony of this witness may be extended and read by him without the presence of counsel.

It is hereby stipulated that neither Ellen Seymour or William G. Pell ever took any part in any of the negotiations about this property or the payment thereof, except as done by and through their agent, J. Fenton Seymour.

Subscribed and sworn to before me this — day of October, 1889.

——— ———.

By consent of counsel the further taking of testimony is continued until Oct. 24th, 1889.

The said George Woodgate Hutchinson having departed from this country and gone to England, as it is said, without having read or signed his foregoing deposition, the same is returned by me without his signature.

ANDREW W. BRAZEE, *Examiner.*

Dated Nov. 20th, 1889.

OCT. 24.

94 The deposition of CLARENCE P. ELDER, a witness produced on the part of the complainants, being duly sworn according to law and interrogated by counsel, testified as follows in his direct examination by Mr. TELLER:

Q. What is your name, age, place of residence, and occupation?

A. Clarence P. Elder; residence, Denver; age, 49; occupation, mining.

Q. Do you know the parties to this suit and J. Fenton Seymour?

A. Yes, sir.

Q. How long have you known J. Fenton Seymour?

A. A number of years; I do not know how many.

Q. Do you know a man by the name of Sanderson?

A. Yes, sir.

Q. What is his first name?

A. J. L.

Q. Do you know of his being interested in the Slide and Spur Mines?

A. Yes, sir.

Q. When did you first become acquainted with the negotiation for the sale of this Slide and Spur Mine to parties in London?

A. I think it was in August, 1886.

Q. You may commence there and state in narrative form your connection with these negotiations.

A. I got a cable from John Haldeman, *Lodong*, who wanted to know about the Slide and Spur Mines. I inquired and found that they were sold, and answered to that effect; then I got another cable telling me to get the property; that he had it placed; then I got a letter. At first I did not want to have anything at all to do with any business over there; but finally I did, and went to Colonel and and spoke to him about it and told him what the letter said; that

the property could be placed if obtained. After that Colonel Seymour and I had an understanding, and I had cables and letters. The cables I would answer. The answers to the cables were made up by Seymour and myself together. In the interest of this, Colonel Seymour and myself went on to New York.

95 Q. What date was that?

A. That was the same year, in October.

Q. October, 1886?

A. 1886.

Q. Go on.

A. There we met D. C. Haldeman, the son of John Haldeman, who knew all about the negotiations on the other side, who was acting for his father at that time and roomed at the Astor House. Then Colonel Seymour came West. I remained in New York with Mr. John Haldeman; not with him, but I saw him nearly every day. Colonel Seymour was to come West and get a report from Foster. Then he got it and it was sent to London. Then, after the title had been fixed and Foster's report sent, Mr. John Haldeman cabled for me to come here and his son Don. to start for Europe. When I left there I supposed everything was fixed. When I got here I found Colonel Seymour had been getting cables, which he showed me. I remained here with this business on hand every day and further on—I guess until July, 1887—when I met Mr. Pell and Colonel Seymour in New York, and we three went to London.

Q. Did Mr. Pell go to London, too?

A. He went with us, we three, and we got into London on Sunday; got to Liverpool Saturday afternoon and London Sunday afternoon. Monday was bank day and no business was done. Mr. Haldeman came and then I returned back. Then the next day these negotiations were started. Colonel Seymour claimed he wanted a hundred thousand dollars cash. After our arrival the Scotch folks and the Birmingham or English folks were notified that we were there. On Thursday of that week Mr. John Haldeman, Colonel Seymour, and myself went to Scotland. There we met Mr. Brown and some other parties in interest. We also went where Colonel Wilson lives and had punch there; returned to Glasgow on Monday, spending Sunday at Rothsea, and left for London Monday night.

Q. What particular dates are those you are speaking of?

96 A. I am following from the time when we went to London, from the 30th of July, 1887. On Monday we did not do any business. That is what is called bank day and no business is done there. On Monday night we returned to London. We got there Tuesday morning, and after being in London—these negotiations were attended to after that. Mr. Maloney did all the negotiating and figuring and drew up the contract of August 18th, 1887. The place of meeting was in a side room of Mr. D. C. Haldeman's insurance office. He is the agent of the Mutual Life. Mr. Haldeman in the negotiations did not appear to have much to say, giving as the reason that Mr. Maloney was the one that was to place the shares on the market. He wanted him to draw the contract so that he could

not find fault with anybody after this. The contract of August 18th was finished and Mr. Brown or — for the Scotch people in Glasgow. It was at his officer where we met these Scotch people, so they found the objections to the agreement of August 18th, and they would not advance any more money unless they were protected in the same way in case Mr. Mulloney did not carry out his contract. The fact is the Scotch people never had much confidence in Mulloney's ability to do what he said, and there was a stop. This two thousand pounds would be raised if they were protected. They drew up a memorandum to that effect, which I think they asked Col. Seymour—I am not positive about that. I d- not know whether it was or not, and in the conversation I advised the acceptance of it for those reasons, which I gave in a nutshell, that by protecting these parties he obtains not only the money which had been paid before, but also in addition fifty thousand dollars, and should misfortune come he will have as partners and part owners in this property as good a class of men as there are in Scotland, and in this settlement—this I do not know whether I told him or not, but I told him one day
97 afterwards. There was a good many things in the way that I did not tell him, because it would only worry him, and by this settlement he waived a lawsuit or the likelihood of any papers being served upon him. After that Col. Seymour went off; came over onto this side. As the returns came in first one appeared and then another; first one person would come in and then another and would say, "The-e returns are not in a form that we can use them," and Mulloney appeared to be a high-tempered man, and would get mad about every time a report would come in, and I cabled and wrote, urging that the reports come in the forms that were given.

Q. Did you keep any copy of your letters?

A. No; I do not think I have got copies of the letters.

Q. Did you keep any copy of any telegrams?

A. Yes, sir.

Q. Have you got those copies?

A. Not those particular *once*. I think I can get them. I have not got them with me now.

Q. Go on.

A. Let me add here, in addition to this, knowing the trouble I was having over there, and knowing that I had difficulties throughout all of these things, I took the trouble in the interest of Mr. Seymour to interese parties over here to *writ* a letter to a personal friend asking him to have David H. Moffat see Col. Seymour and have a talk with him and have him sent these reports as they were wanted over there. Now, as things went along they were going from worse to worse. I felt them coming up all the while until the trouble. I knew that the parties there would claim an additional week *week* every time these forms didn't come just as the forms were given, and I knew that these parties in this suit were the ones being harmed, and that they were getting the benefit of the time over there and would take it. It finally culminated in the office of John Holderman, with Mr. Holderman first and Mulloney after
98 wards and myself for a construction of this contract, Mr. John

Holderman insisting that the reading of it would be when the mine was worked to its fullest capacity it would be able to work and produce. I objected to that. I think the first angry conversation we had was about this time up at his house, where I stayed over Sunday night, and I heard D. C. Holderman tell him when taking some new view that that was not the proper construction. We had a meeting the next day, I think, he insisting on that being the construction and I objecting and refusing to make any construction of that kind. That is where Mulloney and I broke. I have not seen him (Mulloney) since. After that Mulloney and Holderman had broke. I brought Johnson and Mr. Rust up to London. Johnson is a leading attorney in Birmingham. I never met him before, and one time when the talk was about this contract of August 18th he became very angry upon reading it and said, "Are you such damned fools as to sign that?"

Q. Who did he say that to?

A. To Mulloney. I have never seen him since. After that, on three days' notice, Mr. Richmond put in an appearance. I had not asked for his advice or assistance or of anybody else; but he was there, and I hesitated a day about what I should do. It was not satisfactory to me the way he came there. I concluded that, as I was the trustee for the parties on this side and also on the other side, I would remain there and do what I could to make a success.

Q. Richmond came as the bearer of that power of attorney that has been introduced here?

A. Not at that time; that is the second time he came over, by the way. I never asked for that power of attorney at all. Richmond was to act for the parties here.

Q. Did he give you any instructions?

A. I got a letter from Col. Seymour—I believe it was written by Griffin—telling me he went over there to act as the attorney, assistant, and adviser.

99 Q. Did he give you any instruction as to what extent he was to act?

A. I don't know that he gave me any instructions. He had a couple of forms—papers—to dispose of this contract of August 18th. Mr. Richmond & I worked together every day. Every day we were having promises from Mr. Holderman—positive promises—"Now, at a certain time this money will be had." The Scotch people would come down and the Birmingham people would come up, but the matter was put off *very* day and put off till they were all tired. Mr. Brown had a new plan of adjustment, and Mr. Richmond thought he would come to this side and see the parties and arrange before he came over. He did not arrange, but returned, and we were together then endeavoring to do something and had not accomplished anything, and he returned again. Then on June 30th I came over.

Q. Go back a little. You have omitted some important matters. What was there—going back now to the time of the 18th of August contract—what was there about registering the deeds—filing the

deeds—registering the property, as it was called? How did that seem to be done?

A. That came to be done as one of the conditions of that contract, and upon the fifty thousand dollars being paid I at once took it to Wells, Fargo & Co.; then the shares were issued to John Holderman and from him then to me. When the money was paid I cabled to Judge Dixon and Col. Seymour both, I guess, that the money had been paid. Judge Dixon said, "Transfer the property."

Q. I wish particularly to call your attention—what representations were made to Seymour to induce him to consent to that delivery of the deeds, and so forth? I want all the conversation that occurred at the time in respect to the necessity of filing those deeds.

A. The parties there would not have paid the money unless they knew they had got the property, and that was one of the
100 conditions of it. The people couldn't use any shares over there unless they had the title free and clear of all incumbrances; they could not use shares they did not own.

Q. Then was it your understanding that these deeds were recorded so as to enable the company to sell its stock, and there would then be something of value in the stock?

A. That was the only reason.

Q. Mulloney was to raise this other money?

A. As I said, he was the one that got up this contract. Of course, they had to have title for the shares, and it was by the sale of these shares that he was to raise the money to help Holderman and let him pay Col. Seymour and the parties over here.

Q. Could any shares be issued until the title had been registered in the company?

A. It could not.

Q. And was that representation made to Mr. Fenton Seymour to induce him to allow the deeds to be recorded?

A. I suppose that it was done; I suppose that was the understanding. I left London June 30th; got here July 18th. I met Seymour in New York, and we came out to Denver together, where we met Sanderson, and we had several conferences explaining everything, he then telling me that he had a party—a French syndicate—in Paris prepared to take the property and pay spot cash for it for what they had agreed. With that understanding he and Mr. Griffin went over on the other side to Paris, and I followed a week afterwards. That French syndicate business did not amount to anything; we didn't do anything at all. While there I returned to London, after being in Paris one day, I think, and met some parties there, and finally induced Col. Wilson and Mr. Rust to accompany me to Paris. They stayed there two days, and matters were talked up, but nothing was accomplished. They then returned. A week after that, I think, I learned that Mr. Johnson was in Paris, so I saw Mr. Johnson and brought him into a conversation with Seymour and Griffin. I think I went to London four or
101 five times on this business. I think it was the third time Col. Seymour went with me, and I went down-town and met

the whole board and all the parties there. I didn't tell them that Col. Seymour was around until after we had adjourned, when Mr. Brown and I went up to Charing Cross, where we were stopping, and I brought him and Col. Seymour together. Afterwards I brought Mr. Allen and Mr. Seymour together, and then Mr. D. C. Holderman and Mr. Hutchinson. That night Col. Seymour was taken sick and didn't see anybody until about three o'clock the next afternoon. Matters were talked over, but nothing done positively. We returned to Paris that night; then about ten days after that—a few hours before six o'clock in the evening, about—Mr. Brown came over to see if he couldn't make some kind of an arrangement. That night Griffin and Seymour took the twelve-o'clock train and went to Paris, and that is when this Paris agreement was agreed to.

Q. Who was present?

A. Mr. Brown and Griffin and Seymour and myself.

Q. They sailed that night?

A. They sailed that night, and the next morning I returned to London with Mr. Brown—on Monday. The next Sunday I sailed. I reached home—Denver—October 31st, at midnight.

Q. Now, I will go back. When was this company first incorporated or inaugurated?

A. The company—I never knew of its incorporation until I got a prospectus; but it was incorporated, I think, on May 24th or 22nd.

Q. You got a prospectus here?

A. I got a prospectus here—that is, in April, '87.

Q. Have you got that copy of the prospectus?

A. I had one; I don't know.

102 Q. If you have you may produce it. Do you know who the board of directors were?

A. Yes, sir; and I was very much annoyed, too, when I read it and found my name in it. McKerrell was one and Steele was one; Pollock was one; I was one, and John Haldeman, too, who appeared after allotment. I did not know that I was on the board, and I did not want to be.

Q. He was to be a member of the board after allotment of shares?

A. After allotment of shares.

Q. Now, how long a time did you remain a member of the board?

A. Up to the present time.

Q. Did John Haldeman ever act as a member of that board?

A. After Sept. 10th. He staid there until he had some difficulty with McKerrell.

Q. After Sept. 10th, 1887?

A. 1887, Sept. 10th, I think it was.

Q. How long did he continue to act as a member of the board?

A. Until, I think it was, in May, 1888, or June, 1888.

Q. Were you present at any meeting when stock was issued or ordered issued?

A. I was there when that three hundred and seventy-five thousand shares was issued.

Q. What was the date of that meeting?

A. September 10th, I think.

Q. Was there any money paid into the treasury on that stock as a subscription to the stock?

A. None.

Q. What was done with the three hundred and seventy-five thousand shares?

A. Taken down and deposited with Wells, Fargo & Co.

Q. You acting as trustee?

A. I acting as trustee. I will say what is proper at the present time to show when I was trustee. Major McKerrell insisted
103 that he should be a joint trustee with me; that Col. Seymour refused and I refused, and at the advice of others McKerrell kept quiet.

Q. That three hundred and seventy-five thousand shares of stock was deposited with them; when did you receive it?

A. Just as it was issued.

Q. September 10th?

A. Yes, sir.

Q. Where is that stock now?

A. A portion of it is there.

Q. What portion?

A. There was seventy-five thousand shares been given out to the Scotch syndicate; there was forty-five thousand shares given out to Mr. Rust, and there was fifteen thousand shares given up to Col. Wilson. The balance were left in envelopes there, subject to the order of Col. Seymour and myself. The orders for giving up those shares were signed by Col. Seymour and myself.

Q. You mean for giving up the fifteen and the forty-five and the seventy-five?

A. Yes, sir; through Wells, Fargo & Co.

Q. One hundred and thirty-five thousand shares has been delivered, then?

A. Has been delivered.

Q. And they have been delivered to whom?

A. Seventy-five to the Scotch syndicate, forty-five to Mr. Rust, and fifteen to Col. Wilson.

Q. Do these parties compose the three syndicates spoken of?

A. Wilson is a part of the Scotch syndicate. Mr. Rust and Johnson, of Birmingham, have this arrangement between themselves. They are working together. I suppose you might call them the English syndicate.

Q. During the time you were over there—from July—you went there in July, 1887?

A. Yes, sir.

Q. From July, 1887, up to the time that you left there, in 1888, and all the time that you were there in what capacity were you acting?

104 A. As I said, over there (I was urging that I would be off the board) I realized the fact that I was in a very peculiar position, acting as trustee, director for the company, and, at the same time, looking after the interests of the parties on this side. It

is a very peculiar position one does not like to be placed in. It was something I had no control over.

Q. You were acting in the dual capacity of director for the company and as agent for the owners of the property over here, were you?

A. I represented the owners of the property over here, for they had nobody else in the board to represent them. I am speaking now of the old board.

Q. What relation did you hold to John Haldeman?

A. Nothing more than a friend; no business relations. They cabled over here and wrote to me. The reason he did that was because he was a step-brother of mine, and that is the way I came to get into this business.

Q. Up to the time you went over there you did act in the capacity of agent for him, so far as consulting with those parties from whom he wanted to buy the property is concerned?

A. If you would call that agent. He asked me to ascertain a certain thing. I had no power to bind him, and did not assume to have. I went to Seymour about it.

Q. You acted as a middleman between him and Seymour?

A. Yes, sir. He didn't know Seymour. Of course he knew me and wrote to me.

Q. Who was secretary of the company at the time this stock was issued?

A. Mr. Hutchinson.

Q. Tell me who Mr. Ives is and who Mr. Allen is.

A. The firm of Ivew and Allen is an old one. They are the agents there for Wells, Fargo & Co.

Q. You say Ives & Allen were the attorneys for whom?

A. They were the agents for Wells, Fargo & Co. They are
105 in the banking business—representatives of the Inman Steamship Line and SWells, Fargo & Co., and do a banking business; quite an important firm there.

Q. Who is Charles Sloan, Denver?

A. He is—he was the agent of Wells-Fargo here.

Q. Charles Sloan was the agent of QWells-Fargo here, and Ives & Allen were the agents of Wells-Fargo in London?

A. Yes, sir.

Q. Who was Griffin?

A. Griffin was the cashier of Messrs. ASanderson and Seymour.

Q. During the time that you were there, in 1887, did you send telegrams to Griffin, Sanderson, and Seymour?

A. I did to Seymour. I don't remember of any that I ever sent to Griffin.

Q. Did you send a good many telegrams?

A. Yes, sir.

Recess until two o'clock.

Afternoon Session.

A. You asked me about some cables. I will also state what I did

not think of this morning. I wrote Judge Dixon on that subject, and I presume he has got my letter on the subject of these returns not being made as they were wanted.

Q. Let me see that letter.

Judge DIXON: I did not bring it. I can send down and get it.

A. Here is one cable of October 12th. Here is another one in the words I used this morning about losing time.

Q. Do you mean to say these were dispatches?

A. These were cables I sent over here. Here is a copy—different handwriting:

Document of October 12th marked "Exhibit G" and hereto annexed *annexed.*

Said copy of September 23rd marked "Exhibit H" and hereto annexed.

106 A. This one, I remember, was after the trouble I told you about this morning with Mulloney.

Said copy of October 22nd, 1887, received in evidence and marked "Exhibit J," hereto annexed.

A. That trouble culminated, as I explained this morning, as to the manner of construing that contract.

Q. You signed that, did you (showing paper)?

A. Yes; that was sent in answer to a dispatch that I saw to-day. Col. Seymour wanted to know why it was not deposited with Wells, Fargo & Co.

Cable dispatch of October 20th received and marked "Exhibit J," hereto annexed.

Telegram of September 30th marked "Exhibit K" and hereto annexed.

Q. Will you turn to your dispatches and see if you can find a dispatch received from you by Haldeman, dated July 1st, 1887, at London—dispatch from Haldeman to you?

A. "Owners accept terms your cable this date unless last block notified; then Monday; money placed to their credit; Powers withdrawn and Seymour leaves for New York join other parties." That is July 1st, 1887.

Q. They before they got that fourteen thousand dollars?

A. They couldn't get it; got it Monday morning.

Q. That is the contract leading up to the contract of August 18th?

A. No; that is one desiring to have us go over there to England.

Q. I don't care anything about that, then.

A. And they brought on the three thousand pounds, and we left here on the 16th July—at least I did.

Q. There is one thing you omitted, I think—I will go back to that now—to state the facts in connection with the deposit of the deeds in the first instance, the deeds to the property, and whether the grantees' names in the deeds were afterwards changed;

107 and, if so, when and for what reason.

A. The deeds that were first deposited there were deposited

by Col. Seymour when I was in New York. I went on on this same business. After they were deposited he wired me to that effect. Then the change was made.

Q. Who are the grantees in these deeds you speak of now?

A. The first was either John Haldeman, trustee, or John Haldeman—I don't remember which—and then the other deeds were made direct to the company, so as to prevent one transfer—that is, from John Haldeman to the company.

Q. To save one transfer?

A. To save one transfer.

Q. When was that arrangement about changing the deeds to save one transfer made?

A. That was done just before we started to London, in the early part of 1887—early part of July.

Q. At whose request?

A. John Haldeman's, I guess. My idea was that it was no use making two deeds. I suggested, I think, to Judge Dixon—possibly Judge Dixon—and to Col. Seymour; I think he was there.

Q. Where were those deeds after the change was made; with whom were they deposited?

A. They were left with Wells, Fargo & Co.

Q. In London or here?

A. Here, in Denver.

Q. So that the deeds were made out in that way some time in July, 1887?

A. The deeds were made out in that way in July, 1887, before we went to the other side.

Q. While you were there or at any time do you know whether Col. Seymour forfeited that contract of John Haldeman's? You may state all you know about what he did in respect to it.

A. I believe, as to his making a regular formal forfeiture—I don't suppose it was forfeited until Richmond was there and these contracts were made—these new arrangements—and John Haldeman forfeits them by his formal action.

108 Q. John Haldeman forfeits them?

A. John Haldeman forfeits them.

Q. You mean the paper which is set forth in the paper here in which John Haldeman himself says he releases all claims under that contract?

A. Yes, sir; under date, I think, of September 20th.

Q. Mr. Seymour never demanded any portion of this stock for himself, has he, that was not deposited with you as trustee?

A. No; not for himself. I don't think he has.

Q. All that he has ever assumed to control is that this you have mentioned which went to Rust and the Scotch syndicate and these other parties?

A. Directly that way; but these cables have come from John Haldeman over here, making propositions for a certain number of shares at a certain price. At his request I sent back a reply.

Q. At whose request?

A. Col. Seymour's.

Q. By telegram?
A. By cable; yes.
Q. Have you got a copy of it?
A. Yes; I think so. I know I have, but not here.
Q. When was it?
A. Some time since the first of January.
Q. Was it before or after the commencement of this suit; do you know?
A. I think it was before. I think so. You want me to bring that?
Q. Yes; if you have a copy.
A. And also propositions I sent them offering Col. Wilson a thousand shares if he would come over?
Q. It was *utonot* accepted?
A. He did not come.
Q. And the stock at that time was over in London with Wells, Fargo & Co.?
A. Yes, sir.
Q. While you were over there with Richmond—Richmond and yourself—was there any talk of forfeiting this contract and taking in the whole of the stock?
A. Yes, sir. At first Mr. Richmond had his forms there to
109 serve notices, and then, after studying over the situation—and he told me that after reading up the authorities there he did not think it was wise to forfeit it at that time. He was an attorney.
Q. And he did not forfeit it?
A. Didn't forfeit it in that way.
Q. Didn't you also advise against forfeiture?
A. At that time I did, because I was in hopes of getting the money, and that was what the folks wanted here. I would have promises day after day emphatic as promises could be. They would just keep us waiting, waiting, waiting, and expecting, expecting, expecting, and not only did I have confidence, but the Scotch people had confidence in these promises.
Q. But the money didn't come?
A. The money didn't come.
Q. And the stock is still there?
A. And the stock is still there, as I told you this morning. I can give you a copy of my cable, but I can't give you the directions that came. November 1st is the first proposition; then comes the later one. The fifty thousand shares that I spoke of—the offer was not made by me. It was made by Col. Seymour either to Brown or Wilson. I don't remember now.
Q. The first offer of the parties or agreement was November 1st, 1888, and the second offer November 17th, 1888. Whatever answer you gave was immediately after the receipt of these?
A. After consultation, as he shows there, with Mr. Seymour; immediately after the receipt. *A.* There is a copy at my room—copy of some dispatch I had seen that pertains to Mr. Brown.

Witness goes for copy referred to.

Q. Do you remember getting such a dispatch as that?

A. Yes, sir; I think I do.

110 Q. About the time of its date there?

A. Yes, sir. I think I saw the original of that to-day.

Dispatch of October, 1887, received in evidence and marked Exhibit L, hereto annexed.

Cross-examination by Mr. DIXON:

Q. In answer to these dispatches from Haldeman wishing for stock what reply was made?

A. In the first place, I stated what the proposition was and what the answer was to these two propositions.

Q. Those are the dispatches of November *L list* and November 7th, 1888?

A. Yes, sir.

Cablegrams of November 1st, 1888, offered in evidence and marked "Exhibit 1," hereto annexed.

Cablegram of November 17th, 1888, offered in evidence and marked "Exhibit 2," hereto annexed.

Q. In respect to that cable of November 1st what did you do?

A. After Col. Seymour——

Q. What transpired between you and him with reference to that application?

A. We talked over the matter. He asked me what I thought about his being able to do it. I told him I did not have much faith in his ability to place the shares.

Q. Tell me what you finally agreed to do, if anything.

A. Finally sent a cable.

Q. For what?

A. Making an offer of fifty thousand shares at five shillings—that is, $1.25—per share.

Q. To that cable you got that answer?

A. No.

Q. Which is dated November 17th?

A. No, sir; I did not.

Q. What was his reply?

A. That it was higher than he asked others.

Q. In relation to the cable of November 17th?

111 A. I think that cable took in for both.

Q. That cable of November 17th is in reply to your cable, is it not? The first of November he offers to take fifty thousand shares at four shillings?

A. That is the first. Then the second one—the price is too high: "Can take fifty thousand shares at four shillings cash; shares locked; balance name Haldeman."

Q. That reply was that he would take it at five shillings?

A. Yes, sir; then that he would have fifty thousand at four shillings—$1—a share.

Q. When Mr. Richmond came to London were there any communications addressed to you there in relation to him and his mission—any letters?

A. One letter.

Q. Have you got it?

A. Yes, sir.

Q. Who is it from?

A. Signed "J. F. Seymour, by Griffin. It does not say "by Griffin." "G." is there. I suppose it means that. Here are two letters.

Q. What were their dates?

A. October 21st, 1887.

Q. Both of them?

A. Yes, sir; the 21st. I suppose they both came at the same time.

Q. This is the letter, is it?

A. That is the notice.

Q. Richmond brought that to you, did he?

A. No; it came by mail.

Q. Both were together?

A. Both came in the same letter.

Q. Mr. Griffin did nearly all the corresponding, did he, in the name of Mr. Seymour?

A. Yes, sir.

Letters referred to offered in evidence.

Objected to by Mr. Teller for the reason that there is no proof that Mr. Seymour ever authorized that letter, and it shows that it was written by Griffin and has Griffin's signature, and there is no proof that Seymour ever wrote it or authorized it or saw it.

112 Mr. DIXON: I will call Mr. Seymour and ask him if Griffin was authorized to sign his name.

Mr. SEYMOUR: No, sir; he was not. This letter or note was given to Mr. Richmond, and he has the original that I signed, and this — meant to be a copy of that letter.

Mr. TELLER: You think this is a copy?

Mr. SEYMOUR: Yes; I should think so, but this one I do not know anything about. I was sick two days before Richmond went home, and I did not see Richmond.

Copy — said letter of October 21st, 1887, and purporting to be signed J. Fenton Seymour, per G., offered in evidence on cross-examination and marked "Exhibit 3," hereto annexed.

Mr. TELLER: I withdraw my objection to this letter. The other is objected to, as it appears to be a copy and there is no proof of its execution.

Copy of the letter of October 21st, 1887, addressed to J. Q. Richmond, is offered in evidence and marked "Exhibit 4," hereto annexed.

Q. You and Mr. Richardson effected a settlement with John Hildeman?

A. Yes, sir.

Q. Under a power of attorney to yourself and Mr. Richmond?

A. Yes, sir.

Q. Look at that paper and see if that is the paper executed by John Haldeman releasing his interest in the stock in that settlement.

A. Yes, sir.

Q. That is the original paper?

A. That is the original paper.

Q. There is another?

A. Yes, sir.

Q. Executed in duplicate?

113 A. It was written in Mr. Richmond's handwriting, and Mr. Haldeman kept that himself and put a stamp on, and Mr. Richmond got the other one.

Q. Then Richmond wrote all the contracts?

—. He was the lawyer.

Q. Tell who acted there in all these negotiations with Mr. Richmond, when he was there. Who was the leading man doing the business?

A. Mr. Richmond made all these propositions. If you wish me to bring up letters to prove this from Col. Wilson and Mr. Rust I can do it.

Said release offered in evidence and marked "Exhibit Five," hereto annexed.

Q. State what you know about the formation and re-formation of the board of directors of the Slide and Spur Mines.

A. When I went over there I did not know anything at all about any of them. We soon found they were not a strong board. Two directors were made directors because of two hundred and fifty pounds that had been given each of them by Mr. Haldeman, and it was found that the board was not working smoothly, and the only way I could accomplish anything was to throw myself back on the stockholders. Col. Wilson was always very willing to help me out, and the owners of the property began to find out that they were the ones that ought to be on the board, and it was finally agreed that the board should be reorganized. We had great difficulty in getting Pollock and Stevens to resign, and another difficulty was getting Mr. Haldeman. I was asked by the stockholders to assist in having that changed. Of course, it was not a pleasant position for me to be placed in, because it made a feeling between Haldeman and myself, or rather himself to me. There was no feeling on my part towards him. I did what I thought was for the best interests of the company, and they had asked me to do this when Pollock

114 and Steele and Haldeman went out. I was the one that made the first proposition to clear the old board by my resignation, and I would have, but they somehow would not allow it for

the present, and, in the place of Col. Steele and Pollock and Haldeman, Wilson and Mr. Rust and Col. Seymour took their places.

Q. About when was that?

A. That was last June a year ago—I think a year ago—and then I had to arrange with Mr. Brown, and then I had to bring all the Scotch and English people together to Mr. Allen to get him to agree to go on the board. Finally, after he found the board was to be reorganized, and with the class of people that would be there, he agreed (Mr. Allen). I wished Mr. Allen on the board, as he could look after the interests of the parties on this side of the water.

Q. You agreed with Allen, of Ives and Allen, the agents of Wells, Fargo & Co.?

A. Yes, sir. He finally agreed to go on the board after it was formed. Of course, Mr. Allen did not go on after these difficulties. I was prepared to resign when I left there, but at the request of all the parties I remained in until the thing got in shape, and that is the way I happened to be in it. I told them here that I realized that I occupied a very particular position as trustee and director, and at the same time looking after the interests of the parties on this side as much as I could. Of course, my being a director gave me an opportunity to look after the interests of the parties on this side. Of course, in the then position of this business it has left me possibly in a more disagreeable position than any one.

Redirect examination by Mr. TELLER:

Q. When was this reorganization of the board? When was it brought about?

A. It was effected, I think, in June.

115 Q. What year?

A. 1888; before I came over the first time.

Q. From the first of September up till that time who were the members of the board?

A. Major McKerrel, Col. Steele, Mr. Pollock, Mr. Haldeman, and Mr. Elder.

Q. Then Mr. Seymour came in for the first time on the reorganization of the board?

A. On the reorganization of the board.

Q. Who do you mean by the owners on this side wanting to be a member of the board?

A. Col. Seymour has that wrong. I never said anything of that kind. I said when the other parties went off you went on. Col. Seymour went on, and that I did want to have Mr. Allen go on, and he took the same position that I did.

Q. Did Mr. Seymour or Mr. Pell or Mrs. Seymour ever request, to your knowledge, that they or either of them should be made members of the board?

A. I arranged that and notified them, and there never has been a word to this second that they were not satisfied. It was for their protection. I notified them and told them upon what conditions the arrangements would be made.

Continued to Oct. 28th, 1889.

OCTOBER 28, 1889.

The parties appeared by their counsel as heretofore; whereupon the following proceedings were had:

CLARENCE P. ELDER recalled for redirect examination by Mr. TELLER:

Q. You said the other day that you had dispatches showing that Mr. Seymour and the other owners of the property were consulted over here in respect to their being made members of the board before Mr. Seymour was made a member. Will you produce such dispatch if you have it now?

A. I cannot find it now, but I saw one the other day wherein I notified them about the new organization. Mr. Richmond certainly must have told them when he was with them in St.
116 Louis, for he knew all about it.

Q. Can you find among all your papers or letters a dispatch showing any knowledge these parties had before the board was changed other than the dispatch you spoke of which you cannot find or produce?

A. I do not know whether I can or not. It was so generally known that I supposed, of course, they knew it. There was no objection to it. They made no objection, and I supposed they were satisfied.

Q. I am trying to get at whether they had any knowledge or not.

A. I did notify them, but I do not know that I can give you the paper to that effect.

Q. How did you notify them, and when?

A. By cable, I think it was. I think the first cable I sent notifying them was in January, 1888.

Q. Where is that cable?

A. That is the one I was trying to find, and I think I can find it.

Q. Have you any copies of cables you sent?

A. No; only as they refer to the change in the board which was sent to them.

Q. Have you any other than the dispatch you say you lost?

A. I did not say I had lost it. If I remember right that was sent in the early part of January, 1888.

Q. Can you remember the contents of it?

A. I think the phraseology of it, referring to the board, was, "Seymour on board. Wilson, deputy chairman." I saw that the other day.

Q. Was that before or after the board was changed?

A. That was before.

Q. Was there any such dispatch sent after the board was changed in words something like that?

A. That the board had been changed? Yes, sir; they were notified of it when the board was changed. I notified them by dispatch after the matter was consummated.

117 Q. How early did they begin to talk about changing the board?

A. Along, I think, in November, 1887.

Q. You said the other day, I think, that the talk about changing the board did not occur until Mr. Steele and somebody else held a meeting and voted themselves salaries?

A. The talk had occurred before that. I said, "That was the feather that broke the camel's back." I think that was the comparison.

Q. What time was that meeting?

A. That was during the holidays of 1887.

Q. Have you any other writing, either letter or cable, that refers to a change of the board before it occurred, except the one you have spoken of, or have you any recollection of any cable or letter of yours giving to these parties any such information before the board was changed?

A. Well, as I told you the other day, I did not keep copies of the letters I sent to Mr. Seymour, but most certainly I did notify them of the fact, for until Mr. Richmond arrived there he, Col. Seymour, got a letter from me written every Saturday afternoon after the week's business.

Q. This message in January said, Seymour a member of board?

A. Yes, sir. Seymour on board. Wilson, deputy chairman.

Q. Seymour was not on the board at that time, was he?

A. No; I was notifying him he was going to be on board.

Q. Wilson was not deputy chairman then, was he?

A. The thing has not been carried out yet.

Q. At whose suggestion was this dispatch sent?

A. At my own—to keep him posted as to what was going on.

Q. Had Seymour or any of the owners over here requested that the board should be changed and Seymour put on the board?

A. No direct request.

Q. Any indirect request?

A. No; I don't know as there was any indirect; but my
118 judgment about the matter was that people owning so many shares as they did would certainly want to have a member on the board.

Q. That was your judgment in reference to it?

A. Yes, sir.

Q. That was based on the assumption that they were the owners of 75,000 shares of stock?

A. Yes, sir; and this matter was carried out, because, after I notified him of the intention, if he did not want to be put on the board he would have told me so; advised me that he did not want to be a member; but that advice I never had.

Q. When was that?

A. Any time after I notified him. I supposed if he did not want to be on the board he would — advised me.

Q. Did he not tell you he did not?

A. He did not.

Q. Did he tell you he did not want anything to do with the board?

A. I do not think he did.

Q. Did he not send you a dispatch of that kind?

A. I think the phraseology of the dispatch was: Don't care for board; want Haldeman, Rust, & Brown.

Q. You understood from that he did not care anything about the board, but wanted Haldeman to carry out his contract and take the stock?

A. He wanted Haldeman to pay; wanted his money.

Q. Give the date of the contracts between you and Rust and John and D. C. Haldeman for the delivery of the stock spoken of before.

A. Here is a copy of Rust's contract dated March 29, 1888. D. C. Haldeman's was about the same time; John Haldeman's was February 4.

(Paper shown.)

Q. This paper is nothing but a release. When you referred to the contract with John Haldeman did you refer to that contract of February 4 or some other?

A. That of February 4 and that of April; one certainly depends upon the other; no difference; very little change; that is part of the business.

Q. This is the contract by which John Haldeman releases his interest in the contract and all claims arising out of it, is it?

119 A. Yes, sir.

Q. Was the first contract which you say was made February 4 in the handwriting of Mr. Richmond and signed by John Haldeman?

A. Yes, sir.

Q. This is the original?

A. Yes, sir.

Papers here marked "Exhibit M" and hereto annexed.

By consent of parties the further taking of testimony in this cause is continued until Nov. 7 at the hour of ten o'clock a. m., 1889.

Nov. 7, 1889.

Pursuant to the foregoing continuance the parties appeared, by their respective solicitors, as heretofore; whereupon the following proceedings were had:

Re-examination of CLARENCE P. ELDER continued by Mr. TELLER:

Q. If you have any further cables sent by you to Col. Seymoure, Mr. Griffin, or any of the complainants in this case relating to the change in the board sent before the change occurred please produce them.

A. I have none that I can find relating to that matter directly.

Q. Look at this one and say when that was sent (producing telegram).

A. It was sent May 24, 1888.

Said telegram offered in evidence, marked Exhibit N, and hereto annexed.

Recross-examination:

Q. Mr. Elder, I call your attention to this cable of May 25, 1888. Please explain what it refers to.

A. It is an answer to a cable I sent to Mr. Richmond the day before the date of this in answer to Exhibit N.

119½ Q. What do the words "all know situation" refer to?

A. It means the parties know all about the conditions of the business.

The telegram of May 25, 1888, offered in evidence and hereto annexed, marked Exhibit 6.

Q. Look at this long cable on two sheets, dated May 6, 1888, beginning "board reorganized as per par. one," and tell me what this cable refers to.

A. It refers to propositions that Mr. Richmond brought over, and par. one means paragraph one in that list of propositions which meant that the board was to be reorganized.

Mr. Teller objects to evidence of what those propositions were or contained about its being reorganized.

The board was reorganized by the retiring of Messrs. Pollock, Steele, and Holderman and the substitution of Messrs. Seymour, Wilson, and Rust; that was the proposition.

Said cable of two sheets, dated May 6, 1888, received, marked Exhibit 7, and hereto annexed.

Q. I now show you a cable dated January 3, 1888, sent from Denver, addressed to Elder, No. one Craven street, London, and signed Seymour, and ask if you received that cable at London.

A. Yes, sir.

Q. State what that cable referred to or what called it out, if you know.

A. It is a reply to one I sent after my return from Paris; after the meeting held by Messrs. Pollock and Steele, where salaries were voted to themselves and a change of the board was determined on. That cable is in answer to a cable sent January 2, 1888, which was in words following:

120 "Meeting postponed until fifth; Steele and Pollock called special meeting Friday; voted salaries to themselves and censured McKerrell; will close deal if let alone."

The cable of January 3d offered in evidence, marked J, Exhibit 8, and hereto annexed.

Redirect examination:

Q. When was that board reorganized?

A. About the middle of June, 1888.

It is here stipulated by counsel that Mr. Elder may read and correct his evidence without counsel being present.

Surredirect examination:

Q. State whether at any time Col. Seymour ever expressed any dissatisfaction to you at his being elected or made one of the directors of the defendant company.

A. Not until the other day, in this room, has any one ever expressed dissatisfaction about the appointing on the board of Col. Seymour, neither the colonel himself or any other person.

CLARENCE P. ELDER.

Subscribed and sworn to before me this 19 day of November, 1889.

ANDREW W. BRAZEE,
Examiner in Chancery.

(4 days.)

EXHIBIT 1. A. W. B.

Cable Message.

Elder. The Western Union Telegraph Company.

All cable messages received for transmission must be written on the message blanks provided by this company for that purpose, under and subject to the 42 conditions printed thereon and on the back hereof, which conditions have been agreed to by the sender of the following message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

121 Number.	Sent by—	Rec'd by—	No. of words.	From—
W 3038 -------	Ks K ------	EE --------	23	London.

Received at 920 A, Nov. 1, '88. 1888.

To Elder, Denver:

Cable cash price fifty thousand shares also 25 thousand monthly during five months first block very low balance advancing monthly.

HALDEMAN.

To guard against mistakes on the lines of this company, the sender of every message should order it repeated—that is, telegraphed back from the terminus of said lines to the originating office. For such repeating the sender will be charged in addition one-half the usual tolls of this company on that portion of its lines over which such message passes.

This company will not assume any responsibility in respect to any message beyond the terminus of its own lines, and it is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in transmission or delivery or for non-delivery to the next connecting telegraph company of any unrepeated message beyond the amount of that portion of the charge which may or shall accrue to this company out of the amount received from the sender for this and the other companies by whose lines such message may pass to reach its destination, and that this company shall not be liable for mistakes in the transmission or delivery or for non-delivery to the next connecting telegraph company of any repeated message beyond fifty times the extra sum received by this company from the sender for repeating such message over its own lines, and that this company shall not be liable in any case for delays arising from interruptions in the workings of its lines, nor for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company to reach its destination.

This company is not to be liable for damages in any case where the claim is not presented in writing within thirty days after the sending of the message.

EXHIBIT 2.

Cable Message.

The Western Union Telegraph Company.

All cable messages received for transmission must be written on the message blanks provided by this company for that purpose under and subject to the **88** conditions printed thereon and on the back thereof, which conditions have been agreed to by the sender of the following message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Number.	Sent by—	Rec'd by—	No. of words.	From—
W 3025 Ks	K	1	15	London.

Received at Denver, Colo., 9.45 a. m., Nov. 17, 188–.

122 To Elder, Denver:

Can take fifty thousand shares four shillings cash shares locked balance name.

HALDEMAN.

12—1459

To guard against mistakes on the lines of this company, the sender of every message should order it repeated—that is, telegraphed back from the terminus of said lines to the originating office. For such repeating the sender will be charged in addition one-half the usual tolls of this company on that portion of its lines over which such message passes.

This company will not assume any responsibility in respect to any message beyond the terminus of its own lines, and it is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in transmission or delivery or for non-delivery to the next connecting telegraph company of any unrepeated message beyond the amount of that portion of the charge which may or shall accrue to this company out of the amount received from the sender for this and the other companies by whose lines such message may pass to reach its destination, and that this company shall not be liable for mistakes in the transmission or delivery or for non-delivery to the next connecting telegraph company of any repeated message beyond fifty times the extra sum received by this company from the sender for repeating such message over its own lines, and that this company shall not be liable in any case for delays arising from interruptions in the working of its lines, nor for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company to reach its destination.

This company is not to be liable for damages in any case where the claim is not presented in writing within thirty days after the sending of the message.

EXHIBIT 3. A. W. B.

The Sunshine Gold Mining Company (Limited), Sunshine, Colorado.

DENVER, *Oct.* 21, 1887.

Hon. C. P. Elder, London, England.

FRIEND ELDER: We thought it would be advisable to have Mr. Richmond on the ground there so as to advise with you as to our interest in the closing of the sale and to give you any assistance that you may require to relieve you of any responsibility only as trustee, as we talked. He understands that you and Haldeman has option on our 77 thousand shares of stock at figures agreed on by you and me (85c. on the dollar). You understanding the matter fully, we have instructed Mr. Richmond to work with you, and hope this business may be closed up shortly and you can say good-bye
123 to old England and return to your native country.

Yours truly, J. F. SEYMOUR.
G.

Mr. Richmond should arrive within few days after arrival of this, so perhaps it would not be advisable to mention of expecting him till you first have talk with him.

J. F. S. (Copy.)

EXHIBIT 4. A. W. B.

(Copy.)

The Sunshine Gold Mining Company (Limited), Sunshine, Colorado.

DENVER, *Oct.* 21*st*, 1887.

G. Q. Richmond, Esq., att'y-at-law.

D'R SIR: It is agreed between J. F. Seymour and G. Q. Richmond that he goes to London as our attorney to act with C. P. Elder in settlement of the Slide & Spur sale, Mr. Elder now being trustee. Mr. Richmond is to advise with Mr. Elder and to represent our interest.

Truly yours,
(Signed) J. F. SEYMOUR.
WM. G. PELL.
J. L. SANDERSON.

EXHIBIT 5. A. W. B.

The Slide & Spur Gold Mines, Limited.

38 OLD JEWRY, LONDON, E. C., *April* 26*th*, 1888.

Know all men by these presents that I, John Haldeman, being unable to fulfill my contract of August 18th, 1887, with J. Fenton Seymour, hereby voluntarily release J. Fenton Seymour and his associates from any and all liabilities thereunder and surrender all and every claim by virtue of said contract which has or may accrue to me thereunder; this to be in force on and after this date.

JNO. HALDEMAN.

[Int. rev. stamp, 6d.]

124 A true copy.
Teste:
[SEAL.] WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Denver, Colorado, May 13th, 1890.

Received of William A. Willard, clerk, original Exhibit 5.

L. S. DIXON,
By J. STARKWEATHER.

EXHIBIT 6. A. W. B.

The Western Union Telegraph Company, lessees of the American Telegraph and Cable Company.

No. —.

New York: 195 Broadway and 16 Broad street.
London: 21 Royal Exchange.
Liverpool: A5 Exchange buildings.

Service instructions. Received by ——.

	Number of words.	Time received.	
S Prefix or J X 291	23	8.14 p. m.	25 May, 1888.

The following message has been received at 21 Royal Exchange, London, E. C.:

Station from Denver, Col.

To Elder, Hotel Windsor, Lon.:

All know situation parties will not comply and assume all responsibility of litigation can do no more.

RICHMOND.

No inquiry respecting this message can be attended to without the production of this paper.

EXHIBIT 7. A. W. B.

The Western Union Telegraph Company, lessees of the American Telegraph and Cable Company.

No. —.

New York: 195 Broadway and 16 Broad street.
London: 21 Royal Exchange.
Liverpool: A5 Exchange buildings.

Service.
institutions. Received by ——.

	Number of words.	Time received.	
S Prefix or J X 12	103 1st 55	3.9 a. m.	6 May, 1888. London, E. C.

The following message has been received at 21 Royal Exchange, London, E. C.:

125 Station from St. Louis.

To Elder, Windsor, L'd'n:

Board reorganized as per par one 2d cash payment of five thousands pounds within fifteen days 3rd possession of mine to company

Seymour made general manager for one year for company 4th proceeds of mine to be placed with Wells Fargo until purchase price paid 5th no stock to be issued.

—— ——.

No inquiry respecting this message can be attended to without the production of this paper.

The Western Union Telegraph Company, lessees of the American Telegraph and Cable Company.

No. —.

New York: 195 Broadway and 16 Broad street.
London: 21 Royal Exchange.
Liverpool: A5 Exchange buildings.

Service instructions.

Received by ——.

21 Royal Exchange.
6 May, 1888.
London, E. C.

	Number of words.	Time received.
S Prefix or J X	Sec. 48	— m.

The following message has been received at 21 Royal Exchange, London, E. C.:
Station from ——.

To ——:

(2.)

Until purchase price paid except as required for purchases price as per par seven and eight 6th accept nine ten twelve and thirteen par three optional with company will admit any reputable expert for thirty days after payment of five thousand pounds expenses paid by party wishing.

RICHMOND.

No inquiry respecting this message can be attended to without the production of this paper.

EXHIBIT 8. A. W. B.

The Western Union Telegraph Company, lessees of the American Telegraph and Cable Company.

No. —.

New York: 195 Broadway and 16 Broad street.
London: 21 Royal Exchange.
Liverpool: A5 Exchange buildings.

Service instructions.

21 Royal Exchange.
3 Jan., '88.
London, E. C.

126	Number of words.	Time received.
S Prefix or J X 223	32	8.30 p. m.

The following message has been received at 21 Royal Exchange, London, E. C.:
Station from Denver.

To Elder, one Craven St., L'd'n:

We depend on you for cable of situation our trade nothing to do with directors only holdman brown rust this for you alone answer immediately.

SEYMOUR.

No inquiry respecting this message can be attended to without the production of this paper.

EXHIBIT M. A. W. B.

The Slide & Spur Gold Mines, Limited.

38 OLD JEWRY, LONDON, E. C., *July* 4, 1888.

Know all men by these presents that I, John Haldeman, being unable to fulfil my contract, of date August 18th, '87, with J. Fenton Seymour, do hereby voluntarily relinquish said J. Fenton Seymour and his associates from any and all liability thereunder and surrender all and every claim by virtue of said contract which has or may accrue to me thereunder.

This is to be enforced on and after February 20, '88.

JNO. HALDEMAN.

A true copy.
Teste:
[SEAL.] WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Denver, Colorado, May 13th, 1890.

Received of William A. Willard, clerk, original Exhibit M.

L. S. DIXON,
By J. STARKWEATHER.

EXHIBIT N. A. W. B.

The Direct United States Cable Company, Limited.

Head stations (always open): London: 34 Throgmorton street, E. C. / Liverpool: D 6, Exchange buildings. / New York: 40 Broadway. — No. of messages, ——.

127

Branch stations in London: Southsea House, adjoining "The Baltic," Threadneedle street, E. C. / East India avenue, Leadenhall street, E. C. / The Commercial sale-rooms, Mincing Lane, E. C.

Provincial stations: Bristol: Back Hall Chambers, Baldwin street. / Glasgow: 29 Gordon street.

(Office stamp.)
Copy, May 24th.

	Words.	How paid.
Prefix ----------	Add's----------	Cash ----------
Code ----------	Text----------	Stamps ---------
Sent at ----------	Instr'ns----------	
To ----------		——
By ----------	Total------	Total------

To avoid mistakes, attention is called to the importance of legible writing.

Service instructions.

Form for Message "Via Direct Cable" for the United States of America, Canada, West Indies, and Central and South America.

From Elder
To Richmond, Windsor, Denver:

Explain Seymour forfeit of Haldeman contract makes owners own over one hundred and eighty thousand shares; new board;

mine worked; returns sent; gives shares cash value. I strongly urge this solution of business being accepted; refusal of above and troubles following must rest upon owners' heads. Answer.

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent. A quarter of the original cost for transmission is charged in addition for such repetition.

Conditions.—The company may decline to forward the message, though it has been received for transmission; but in case of so doing shall refund to the sender the amount paid for its transmission.

In case the message shall never reach its destination by reason of any neglect or default of the company or its servants whilst the message remains under the control of the company they will refund the amount paid by the sender for such message.

The company shall not be liable to make compensation beyond the amount to be refunded as above for any loss, injury, or damage arising or resulting from the non-transmission or non-delivery of the message or delay or error in the transmission or delivery thereof, howsoever such non-transmission, non-delivery, delay, or error shall have occurred.

The control of the company over the message shall be deemed to have entirely ceased for the purposes of these conditions at any point where, in the course of the transit of the message to its destination, it may be entrusted by the company (and the company shall have full power so to entrust the message) for further transmission
128 by or through any system, service, or line of telegraph belonging to or worked by any administration or authority not controlled by the company exclusively, although worked as part of or in connection with the telegraphic system or service of the company.

Having read the foregoing conditions, I hereby request that the above message be telegraphed to its destination, as above, according to the said conditions, and be transferred to the Direct United States Cable Company, Limited, to be forwarded by the cables of that company subject in all respects to the aforesaid conditions, by which I agree with the said company to be bound and abide.

The name of the place from which messages originate is transmitted free of charge.

Not to be telegraphed. { Signature: C. P. ELDER.
Address: Hotel Windsor. (P. T. O.)

The Direct United States Cable Company, Limited.

Notice.

For the better guarding against mistakes, every telegram of consequence should be repeated by being sent back from the station at which it is to be received to the station from which it is originally

sent. Quarter of the original cost for transmission is charged in addition for such repetition.

The name of the place from which messages originate is transmitted free of charge.

Telegrams for this company's cables handed in at postal telegraph offices must be marked "via direct cable." This instruction is signalled free of charge.

(For use of G. P. O.)

	£ s. d.
Telegram	
Repetition	
Notice of delivery	
Reply	
Excess in reply paid	
Extra copies	
Redirection	
Porterage	
Special charges	
Total	

UNITED STATES OF AMERICA, *District of Colorado*, } ss:

I, Andrew W. Brazee, duly appointed examiner in chancery by the circuit court of the United States for the district of Colorado, do hereby certify that on the several days mentioned in the proceedings and depositions annexed I was attended by the counsel
129 and witnesses aforesaid at my office, 1540 Champa street, Denver, Colorado; that said witnesses, to wit, J. Fenton Seymour, George Woodgate Hutchinson, and Clarence P. Elder, each were first duly sworn by me according to law as witnesses in the suit or cause in the caption hereto mentioned and there examined before me orally by counsel, and by consent of the parties, by their several said solicitors, the examination and depositions of said witnesses were severally stenographically written down and afterwards type-written; that such examinations were had in the presence of the solicitors of the several parties hereto; that said depositions, after being completed and type-written, were severally read over by me to the witness deposing the same in the presence of the counsel of the respective parties or such of them as chose to attend, excepting that George Woodgate Hutchinson departed this country
130 and went to England, as it is said, without reading his testimony after it was type-written and returned to me, and his deposition is therefore returned by me without his signature and jurat of verification thereto.

That after said depositions had been severally read over to the witness making and deposing to the same and corrected by him as appears opposite my initials, "A. W. B.," in the margin thereof, said depositions were severally signed and sworn to before me by said witnesses so making and signing the same, with the exception aforesaid.

I further certify that the foregoing is a true statement of all proceedings had before me in the matter of taking testimony herein, and that exhibits from 1 to 8, inclusive, and A to N, inclusive, were introduced in evidence in said cause during the taking of said depositions, and no subpœnas for witnesses have returned before me in said cause.

ANDREW W. BRAZEE,
Examiner in Chancery.

Witness' fees:

J. Fenton Seymour attended four days @ 1.50 *miles*		$6 00
George Woodgate Hutchinson, one day, 1.50 "		1 50
& Clarence P. Elder, four days, 1.50 "		6 00
My fees:		
Six days' services @ $3.00	$18 00	
216 fols. at .20	43 20	
		$61 00
Administering 7 oaths @ 10c.	70	
Marking 21 exhibits @. 10	2 10	
		2 80
		64 00

1890, Jan. 9.—Rec'd pay from J. F. Seymour in full.

A. W. BRAZEE,
Master and Examiner in Chancery.

131 (Indorsed:) No. 2392. U. S. circuit court, at Denver. In chancery. Ellen R. Seymour & William G. Pell *vs.* The Slide & Spur Gold Mines, Limited. Complainants' testimony. Opened, published, and filed Feb. 20, 1890. William A. Willard, clerk.

And afterwards and on, to wit, the 13th day of May, A. D. 1890, the same being one of the regular juridical days of the May term, A. D. 1890, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Leave to Withdraw Exhibits "5" and "M."

ELLEN R. SEYMOUR and WILLIAM G. PELL
vs.
THE SLIDE AND SPUR GOLD MINES, Limited, and JOHN HALDEMAN.

2392. In Chancery. Bill for an Accounting and for Other Relief.

At this day come the said complainants, by Willard Teller, Esq., their solicitor, and the said defendants, by L. S. Dixon, Esq., their solicitor, also come.

And thereupon, on motion of the said defendants and pursuant to a written stipulation thereto, herein filed, it is ordered by the court that the said defendants have leave to withdraw from the files

herein two certain releases, marked as Exhibits "5" and "M," to examiner's report of testimony on part of the said complainants, upon leaving certified copies of the same in place thereof.

And afterwards and on, to wit, the 17th day of June, A. D. 1890, there was handed down and filed in said court and in said cause the opinion of the district judge on final hearing.

And the said opinion is in words and figures as follows, to wit:

132 *Opinion.*

In the Circuit Court of the United States, District of Colorado.

ELLEN R. SEYMOUR and WILLIAM G. PELL, Plaintiffs,
vs.
THE SLIDE & SPUR GOLD MINES, Limited, Defendant. } No. 2392.

HALLETT, *J.:*

In 1886 complainants owned a mine in Boulder county, which they desired to sell in England, and they employed John Haldeman, of London, as a broker, to make the sale. Haldeman conceived the idea of organizing a corporation to purchase the property, and procured the organization of respondent under the limited liabilities companies acts of Great Britain for that purpose, apparently with a view to keep the sellers and buyers apart. Haldeman proposed to take the title of the mine in his own name and convey it to the corporation which should be organized, and thus become a purchaser from complainants and a grantor to the corporation.

Complainants were to sell for $750,000, of which one-half was to be paid in cash and one-half in stock of the corporation.

The first deed to the property was made to Haldeman and placed in escrow with Wells, Fargo & Company, of London and the United States, to be delivered on payment of the cash part of the consideration.

Respondent was organized in the early part of the year 1887, but nothing of consequence was done towards completing the sale until August 18th of that year, when an agreement was entered into between J. Fenton Seymour, acting for complainants, and Haldeman, to the effect that upon payment of ten thousand pounds, in addition to 12,500 pounds paid before that time, Seymour should
133 "register the titles," "free from all charges and incumbrances," in Boulder county, and, furthermore, that Seymour should cause the mine to be worked "to its full capacity," and that the proceeds of the mine should amount to certain sums stated in the agreement, of which the company should have notice by cable. The agreement then proceeds as follows:

"The said J. Fenton Seymour hereby undertakes and agrees to take the control of the management of the said property until the payments hereinafter mentioned are completed, and it is understood and agreed that he shall retain such control until the said pay-

ments are completed. The said John Haldeman agrees that 375,000 shares of one pound each in the above company shall be transferred to Mr. Clarence Preston Elder, as trustee, and deposited with Messrs. Wells, Fargo & Company in London to the intent that the said shares shall be held as security for the due performance of the following conditions, viz: First, the payment of 10,000 pounds, in addition to the above-mentioned 22,500 pounds, within three days after the receipt of the third successive weekly return from the mine as hereinbefore mentioned; and, second, the balance of 45,000 pounds at the expiration of ten days after the receipt of eight successive weekly returns of the nature and value above specified. Upon the completion of the above-mentioned payments the said J. Fenton Seymour hereby undertakes and agrees to release the above-mentioned 375,000 shares, less 77,500, to which he is entitled, and also less the number of shares sold with the consent and under the supervision of the aforesaid Clarence Preston Elder, acting for the said J. Fenton Seymour. In case the weekly returns cabled from the mine shall from any cause fall below the sum of two hundred pounds sterling per week, then in that case such returns shall not count, but the time for paying the second ten thousand pounds and the balance of the forty-five thousand pounds shall be extended *pro rata;* but should the successive weekly returns amount to two hundred pounds sterling per week, with a moderate increase weekly, as hereinbefore mentioned, and the said John Haldeman shall make default in the payment of the balance of the forty-five thousand pounds, then in that case the said J. Fenton Seymour shall have the right to forfeit the amounts already paid and to claim the above-mentioned 375,000 shares."

There is some dispute as to the result of work carried on by Seymour in the mine under this agreement, complainants claiming that returns were made as required by the agreement and respondent claiming that the mine fell short of the amount specified in the agreement, but this is not material. The £10,000 first mentioned in the agreement were paid, and a deed from complainants to the company for the property was placed on record in Boulder county.

This deed, it will be observed, was substituted for that which
134 was first made out to Haldeman, and was then in escrow with Wells, Fargo & Company, and the parties say that this was done for convenience and to save the necessity of recording two deeds, one to Halderman and another from Halderman to the company. At all events the company obtained title directly from complainants. Some small payments were made on the further sum of fifty-five thousand pounds, which by the agreement was to be paid to complainants within two or three months thereafter. Nothing further was done towards completing the sale until October 5th, 1888, when a proposition in writing was made by J. Fenton Seymour, as agent for complainants, to certain persons who had become or were about to become stockholders in the company, as follows:

"First. In payment of thirty-five hundred pounds to Wells, Fargo & Company we agree to start the mine at work in name of company, said sum to credit of Col. Seymour."

"Second. Company to send cashier and engineer, if they think fit, and Colonel Seymour to be resident manager and director for the period of one year."

"Third. All proceeds to be transmitted to company bankers."

"Fourth. Mr. Elder to deliver 75,000 shares to the Scotch subscribers and forty-five thousand to Mr. Rust on payment of said sum."

"Fifth. The balance of shares to remain in Mr. Elder's hands as trustee until a final settlement can be made, inside of three months after acceptance of this proposition."

"Sixth. Colonel Wilson, or whoever pays the thirty-five hundred pounds, to receive fifteen thousand shares from Mr. Elder on the final settlement, not later than three months, and meantime receive a legal obligation from Mr. Elder as trustee."

"Seventh. On resignation of Mr. Elder as a director Mr. Allen to be elected."

"Eighth. Thirty-five hundred pounds to be paid so soon as the company can register the transfer of the 75,000 shares."

The thirty-five hundred pounds mentioned in this proposition were paid to complainants and accepted by them on the 15th day of December, 1888, and it is sufficiently shown that Seymour thereafter held possession of the property for the company.

An agreement made by Haldeman and one H. E. Gilbert, who, prior to the organization of the company, seems to have been set up as its representative, of date May 16th, 1887, and another
135 agreement, of date September 10th, 1887, between the company, Halderman and Gilbert, sufficiently show that the 375,000 shares deposited with Wells, Fargo & Company and by the agreement of August 18th, 1887, transferred to Elder as trustee were given to Haldeman in payment for the property, and a principal point in controversy between complainants and respondent is whether they were also accepted by respondent in the same way. It is clear enough, however, that this is not the effect of the agreement of August 18th, 1887, for by the terms of that instrument Elder was to hold the shares "to the intent that the said shares should be held as security for the due performance of the following conditions," and then follow the conditions for the payment of the ten thousand and the forty-five thousand pounds, and the final clause, which gives Seymour the right to forfeit the amount paid and to claim the shares, is only an option in case of default, which complainants were in no way bound to accept.

It is said, however, that the corporation was not a party to this agreement, and that Haldeman was not its agent in making it.

Having accepted title according to its terms and paid some part of the money mentioned in the agreement, the corporation is not now in a position to deny its authority, and the agreement must be regarded as having been made by the corporation or in its behalf, or at all events as having been ratified by it.

It is also urged that complainants waived their right to a vendor's lien upon sale of the property by taking security for the purchase-money; first, in withholding the deed; afterwards in retaining possession, and again by the pledge of shares in the hands of Elder as

trustee; and it must be conceded that all these things were done by complainants with a view to secure the purchase-money.

136 When the matter was first presented I was of the opinion that by these acts complainants had waived their lein, and so stated to counsel, but upon looking into the authorities I have reached a different conclusion. As stated by respondent's counsel, although resting upon the contract of sale, the lien is quite independent of it, being implied from the contract rather than expressed in its terms. Where there is no waiver of lien, express or implied, it will be recognized and enforced, and taking security for the purchase-money is only presumptive evidence of waiver.

Second Jones on Leins, section 1090.

In all that was done by complainants throughout the whole negotiation there is no satisfactory evidence of intention to abandon the property as security for the purchase-money. Certainly in withholding the deed and the possession they manifested the strongest disposition to hold onto the property until the money should be paid, and as to the shares of stock they assumed only a right of possession until the purchase-money should be paid. Apparently the stock was to be sold by Haldeman or by some one connected with the company, and complainants were not bound to do anything in that way. They merely required that the stock should be held by a trustee, subject to sale by Haldeman, until the purchase-money should be paid. In this way also they were in a sense holding onto the property as security for the purchase-money in so far as the stock represented the property.

In Cordova *vs.* Hood, 17th Wallace, 1, it is held that the matter of waiver is to be determined upon all the circumstances of the case, and if nothing appears to show it affirmatively the lien may be recognized and enforced.

I find nothing in these negotiations to support the conclusion that defendant intended to abandon the property as security for the purchase-money.

137 As a further defense respondent contends that the lien was waived by that clause of the agreement of August 18th, 1887, by which the title to the mine was to be registered "free from all charges and incumbrances," complainants thereby agreeing to give the company a clear title.

This is undoubtedly a correct construction as to antecedent transactions, but it is not to be taken to refer to the negotiation then pending. An agreement to convey without incumbrance means only that the title shall be clear at the date of the agreement. Whatever is incorporated into the agreement or grows out of it is not affected by such an obligation. It has never been understood that a vendor's lien is waived by covenants of warranty inserted in the deed of conveyance; and so in this article complainants must be understood as saying that the title which would be given to the company by their deed was free from incumbrance. If the contract had provided for security by mortgage or trust deed it would be absurd to say that by the clause under consideration such security

would be waived, and this clause has no relation whatever to the vendor's lien.

Further on in the same instrument provision is made for the payment of 55,000 pounds of the purchase-money, and so the article itself gives notice of the fact that a large part of the purchase-money was still due. Upon the face of the instrument it cannot be assumed that the premises were free and clear from incumbrance in respect to purchase-money. Referring to the same clause, respondent maintains that complainants are estopped of their lien from having participated in the sale of shares of stock of the company. It is urged that having agreed to invest the company with a clear title to the mine, and having sold shares of the company's stock upon that representation, they shall not be permitted to take the company's property and thus destroy the value of the shares
138 so sold. As already stated, the stock was sold by Haldeman or by the company; but if the stock had been sold by complainants there was in fact no representation as to the vendor's lien. As already explained, the agreement to convey without incumbrance relates to the state of the title at that time and not to anything growing out of the sale itself.

Mr. Justice Story says (Second Eq. Ju., § 1224):

"Generally speaking, the lien of the vendor exists, and the burden of proof is on the purchaser to establish that in the particular case it has been intentionally displaced or waived by consent of parties. If under all these circumstances it remains in doubt, then the lien attaches."

There is much in the record to which the learned and elaborate arguments of counsel have been addressed which somewhat tends to show an intention on the part of complainants to waive their lien on the premises conveyed, but, in my judgment, it falls short of establishing the fact, and therefore I am constrained to enforce a lien for the purchase-money. This, of course, excludes the part which was to be paid in stock of the company, and it has no reference to expenditures of complainants on the property since the conveyance. The bill prays for these expenditures, but they were not pressed in argument, and I see no reason for allowing them. Probably counsel will be able to agree as to the amount of unpaid purchase-money, and if they cannot do so it may be necessary to refer the cause for the purpose of ascertaining the amount.

(Indorsed:) 2392. Circuit court U. S. Ellen R. Seymour *et al.* *vs.* The Slide and Spur Gold Mines, Limited. Opinion district judge. Filed Jun- 17, 1890. William A. Willard, clerk.

And afterwards and on, to wit, the 8th day of July, A. D. 1890, the same being one of the regular juridical days of the May term, A. D. 1890, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

139 *Decree.*

ELLEN R. SEYMOUR and WILLIAM G. PELL *vs.* THE SLIDE AND SPUR GOLD MINES, Limited.	2392. In Chancery. Bill for an Accounting and for Other Relief.

Now, on this eighth day of July, 1890, this cause coming on to be heard upon the pleadings herein and upon the evidence taken and reported and now on file herein, the said complainants appearing by Willard Teller, Esquire, their solicitor, and the said defendant appearing by L. S. Dixon, Esquire, its solicitor, and the court having heard the arguments of the respective solicitors for the said parties, and having fully considered the evidence, and being now fully advised in the premises—

It is hereby ordered, adjudged, and decreed that there is now due from the said defendant, The Slide and Spur Gold Mines (Limited), to said complainants herein the sum of two hundred & fifty thousand eight hundred dollars; that said sum is the unpaid portion of the purchase-money for the property mentioned and described in the bill of complaint as follows, to wit:

"All that piece or parcel described in and by a patent from the Government of the United States as the Slide lode, and recorded in the office of the clerk and recorder of Boulder county, Colorado, in Book 59, page 96; also the Spur lode, crossing the said Slide lode, and known in the United States land office at Central City, Colorado, on the 25th day of August, 1886, as mineral entry No. 2322 and lot No. 335."

And it is further ordered, adjudged, and decreed that the said complainants are entitled to have, hold, and do now hold a lien upon the said above-described premises for the said sum of two hundred & fifty thousand eight hundred dollars, and that said lien has existed since the date of the purchase of said premises by the defendant, to wit, since the 6th day of September, 1887.

And it is further ordered, adjudged, and decreed that the said defendant pay the said complainants the said sum of two
140 hundred & fifty thousand eight hundred dollars and interest from the date of the filing of this decree, at the rate of eight (8) per cent. per year, until paid and the costs of this suit within thirty (30) days from the date of the filing of this decree, and that in case of default in such payment or in case of default in the payment of any part thereof that the said above-described premises, to wit, the said lode mining property, together with its appurtenances, or so much thereof as may be sufficient to secure the amount due said complainants for the said principal sum above mentioned, with interest and costs in this cause, shall be sold at public auction by one of the masters of this court; that said sale shall be made at the front door of the building in which this court is now held, on Champa street, in the city Denver, Colorado.

That in case of a sale of said property the master in chancery shall give public notice of the time and place of such sale, together with a description of the property to be sold, which said notice shall be published in the "Denver Republican" (daily) for at least thirty (30) days before the day of sale therein mentioned, and that upon such sale the complainants or either of them may become the purchasers of such property without payment of any money except a sum sufficient to pay the costs of this suit and the costs of the said sale, any amount bid by them or either of them above said costs last mentioned to be credited on the amount due by this decree.

And that in case of said sale the master in chancery shall execute to the purchaser thereof a good and sufficient deed to the said premises or to such part of the same as shall be sold, in accordance with the practice of this court, and that upon such sale the
141 said master in chancery, out of the proceeds of such sale, shall retain his fees and costs of sale, and that he shall also pay out of such proceeds the costs of this suit, to be taxed, and also the amount found due by this decree to the said complainants, together with the legal interest thereon from the date of the filing of this decree, or so much thereof as the purchase-money received by him on such sale will pay out of the same; that said master in chancery shall take receipts for all sums of money paid by him and file the same with his report of his doings in the premises, and he shall bring the surplus money, if any, arising from said sale into this court without delay, to abide the order of this court.

It is further ordered, adjudged, and decreed that if the complainants or either of them are the highest and best bidders at such sale, and the said premises or any part thereof is struck off at said sale to them or either of them, the said master shall (the costs of this suit and the costs of said sale, including the master's fees for commissions, &c., on sale, such commissions and fees being such as may be agreed upon between said complainants and the said master, not exceeding, however, the fees fixed by law having been paid) make out a deed to said premises or such part thereof as may be sold, and the amount bid by such complainant or complainants over and above the amount of costs shall be credited and allowed to said defendant on the amount found due by this decree.

It is further ordered, adjudged, and decreed that upon such sale and upon the execution and delivery of a deed to said premises or any part thereof by the said master, as above provided for, the said defendant, its successors and assigns and all persons claiming through, by, or under it, shall be forever barred of all right, title, and interest in said property and of all equity of redemption thereof.

142 That the said master shall, immediately upon the sale of said premises, make and file in this court a report showing his action in the premises, together with receipts for costs and disbursements made by him, and a copy of the deed, if any, so made by him, and that this cause be continued to the next term of this court for the purpose of receiving and acting upon said report; and

thereupon the said defendant prayed an appeal and the same was allowed.

And afterwards and on, to wit, the 9th day of July, A. D. 1890, the same being one of the regular juridical days of the May term, A. D. 1890, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order Fixing Amount of Supersedeas Bond.

ELLEN R. SEYMOUR and WILLIAM G. PELL *vs.* THE SLIDE AND SPUR GOLD MINES, Limited.	2392. In Chancery. Bill for an Accounting and for Other Relief.

At this day come the said complainants, by Willard Teller, Esq., their solicitor, and the said defendant, by L. S. Dixon, Esq., its solicitor, also comes.

And thereupon it is ordered by the court that supersedeas bond on appeal herein be in the sum of five thousand dollars ($5,000.00).

And afterwards and on, to wit, the 3rd day of September, A. D. 1890, came again the said defendant, by its solicitor aforesaid, and filed in said court and in said cause its bond on appeal to the Supreme Court of the United States; and the said bond is in words and figures as follows, to wit:

143 *Bond on Appeal.*

UNITED STATES OF AMERICA,
District of Colorado.

Know all men by these presents that we, Edward Eddy and Joseph A. Thatcher, of the city of Denver, in the county of Arapahoe and State of Colorado, are held and firmly bound unto Ellen R. Seymour and William G. Pell in the sum of five thousand dollars, to be paid to the said Ellen R. Seymour and William G. Pell, their and each of their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 6th day of August, 1890.

Whereas lately, at the May term, 1890, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between the said Ellen R. Seymour and William G. Pell, plaintiffs, and The Slide and Spur Gold Mines (Limited), defendant, decree was rendered against the said The Slide and Spur Gold Mines (Limited), from which the said The Slide and Spur Gold Mines (Limited), hath taken an appeal to the Supreme Court of the United States to reverse the decree so rendered:

Now, therefore, the condition of this obligation is such that if the

above-named The Slide and Spur Gold Mines (Limited), shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

EDWARD EDDY. [SEAL.]
JOSEPH A. THATCHER. [SEAL.]

Approved Aug. 13th, '90.
MOSES HALLETT, *Judge.*

144 STATE OF COLORADO, } ss:
Arapahoe County, }

Edward Eddy and Joseph Thatcher, the sureties in the foregoing bond, being each duly sworn, deposes and says each for himself and not for the other that he is worth in real estate and personal property the sum of five thousand dollars over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

EDWARD EDDY.
JOSEPH A. THATCHER.

Subscribed and sworn to before me this sixth day of August, A. D. 1890.

[SEAL.] EDWARD S. IRISH,
Notary Public.

My com. expires 7, 16, '92.

(Indorsed:) No. 2392. Circuit court of the United States, district of Colorado. Ellen R. Seymour and William G. Pell *v.* The Slide and Spur Gold Mines (Limited). Supersedeas bond. Filed Sep. 3, 1890. William A. Willard, clerk.

And afterwards and on, to wit, the 9th day of September, A. D. 1890, came again the said defendant, by its solicitor aforesaid, and filed in said court and in said cause its assignment of errors; and the said assignment of errors is in words and figures as follows, to wit:

Assignment of Errors.

In the Supreme Court of the United States.

145 THE SLIDE & SPUR GOLD MINES (Limited), Appellant, }
vs.
ELLEN R. SEYMOUR and WILLIAM G. PELL, Appellees. }

I.

The court erred in holding that appellant was purchaser of the real estate in question from the appellees and in finding and decreeing that appellant was indebted to appellees for any part of the purchase-money.

II.

It erred in holding that the consideration money or price of said real estate had not been fully paid by appellant.

III.

It erred in not holding that the consideration or price agreed to be paid by appellant had been fully paid.

IV.

It erred in holding that there existed in favor of appellees and against appellant a vendor's or grantor's lien upon the premises in question.

V.

It erred in holding that appellees were not estopped from asserting as against appellant and its shareholders the existence of such alleged lien.

VI.

It erred in the rendition and entry of decree in favor of appellees when the same should have — rendered and entered in favor of appellant and against appellees, dismissing their bill.

L. S. DIXON,
Solicitor for Appellant.

146 (Indorsed:) Circuit court U. S. Ellen R. Seymour *et al. vs.* The Slide and Spur Gold Mines, Limited, *et al.* Assignment of errors. Filed Sep. 9, 1890. William A. Willard, clerk.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore had in said court and in a certain cause lately in said court pending, wherein Ellen R. Seymour and William G. Pell were complainants and The Slide & Spur Gold Mines (Limited) was defendant, as fully and completely as the same still remains on file and of record in my office.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this ninth day of October, A. D. 1890.

WILLIAM A. WILLARD, *Clerk.*

Endorsed on cover: Colorado C. C. U. S. No. 1459. The Slide and Spur Gold Mines (Limited), appellant, *vs.* Ellen R. Seymour and William G. Pell. Filed October 17, 1890.

FEB 15 1894
JAMES H. McKENNEY,
CLERK.

In the Supreme Court

Of the United States.

THE SLIDE AND SPUR GOLD MINES, (LIMITED),
Appellant.
vs.
ELLEN R. SEYMOUR AND WILLIAM G. PELL,
Appellees.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

STATEMENT OF FACTS AND BRIEF AND ARGUMENT FOR APPELLANT.

HARVEY RIDDELL,
Solicitor for Appellant.

In the Supreme Court

Of the United States.

THE SLIDE AND SPUR GOLD MINES, (LIMITED),
Appellant.

vs.

ELLEN R. SEYMOUR AND WILLIAM G. PELL,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

STATEMENT OF FACTS AND BRIEF AND ARGUMENT FOR APPELLANT.

Statement of Facts.

This is a suit in equity brought by appellees against appellant, a corporation organized under the laws of Great Britain, and doing business in Colorado, and John Haldeman, to establish and enforce a vendor's lien. No service was had on Haldeman, and no appearance was made by or for him, and the suit proceeded against appellant alone.

A statement of the facts of this transaction, in order, will perhaps best enable the merits of the case to be seen. References will be made to the folios of the printed record, as shown by the side paging.

In August, 1886, and prior thereto, appellees were the owners of the Slide Lode Mining Claim and the Spur Lode Mining Claim, situate in Gold Hill mining district, Boulder County,

Colorado, the Slide being patented and the Spur having been entered for patent in the local land office; these claims crossed each other nearly at right angles.

For selling or otherwise disposing of these properties, appellees constituted and appointed J. Fenton Seymour, husband of Ellen R. Seymour, their attorney in fact, and all the transactions and negotiations on behalf of appellees were conducted by their attorney, and not by appellees in person (f. 93), and the acts and doings of Seymour were expressly ratified and approved by appellees (f. 8).

About Oct. 9, 1886, Seymour gave to one W. F. Bruff of the city of New York, an option to purchase these properties at the consideration of $750,000, upon certain terms (f. 2).

Bruff in some manner brought the properties to the attention of John Haldeman (in some places in the record spelt otherwise) at and of London, England.

It seems that it was doubtful about Bruff's being able to purchase or dispose of the properties according to the terms of his option, and Haldeman himself desired to make purchase thereof. To that end Haldeman sent cablegrams and letters from London to Clarence P. Elder, his stepbrother, at Denver, Colorado, enquiring about the claims. Seymour was informed by Elder of the contents of the letters and cables, and replies thereto were prepared by them together, (f. 94). The result of those negotiations was that in October, 1886, Seymour and Elder went from Denver to New York where they were to meet and did meet D. C. Haldeman, the son of John Haldeman, who came from London to act for his father in negotiations for the purchase of the property, (f. 47 and 95). These negotiations resulted in the following written proposition from Seymour to John Haldeman, ~~made~~ wrote about Oct. 19, 1886:

"Dear Sir:—I agree that in case you cannot raise the required sum within the specified time in your contract dated about the 9th day of October between W. F. Bruff, acting under our authority, and yourself, to change the conditions as follows: viz, to sell you the Slide Mine for $750,000.—twenty-five thousand dollars to be paid one week after the receipt in London of Foster's report, this to be the first payment on the property, the balance of the purchase price, $725,000, to be paid within two months from the date of the payment of $25 M—one half in cash and one half in fully paid common shares of the company to be formed. In case the second and last payment is not made when due the agreement cancels itself and the $25 M

is forfeited. No ore to be taken from the mine after first payment. I further agree to give you a call at par for two months from date of issue upon the shares received as part payment for the property.

(Signed) J. F. SEYMOUR.
A. B. DAVIS."

This proposition was also signed by A. B. Davis, but it was so signed by Davis because he had had either in person or under the name of Bruff an option to purchase these properties which expired Sept. 1, 1886, and claimed the option should be extended as Bruff, his agent, would be able to make a satisfactory disposition thereunder, and it was signed by Davis simply to settle any trouble or litigation arising from the Davis or Bruff option (f. 46-47). Neither Davis nor Bruff appear thereafter in the case.

Calling attention to the aforesaid option contract, it will be observed—

First—That the sale was to be to Haldeman, not to a company.

Second—One-half the purchase price was to be paid in money and one-half in the stock of a company to be formed, and from this

Third—It was contemplated that a corporation should be formed by Haldeman which would be the eventual owner of the properties.

Seymour swears (f. 47.) that the formation of such a corporation was talked about as the eventual owner of the property, but claims that it was not to have been formed until the payment of the one-half purchase price in money had been completed. However, the company was incorporated May 24, 1887 (f. 5 and 18), and the prospectus was issued and the matter placed before the public, and of these facts Seymour was informed sometime about that date (f. 48), though no stock was issued till Sept. 10, (f. 92). But as Seymour subsequently dealt with full knowledge that the company had been formed, he cannot and does not make any claim on this account. (Witness, throughout the case, speaks of a pound as the equivalent of five dollars).

By the terms of the option $25,000 was to be paid within one week after the report of Foster (a mining expert) had been received at London, which report was obtained by Seymour and forwarded to London (f. 95), and this payment was made substantially as agreed and to the satisfaction of Seymour about January 26, 1887, the amount being $24,250 (f. 47).

At the time of this first payment appellees made and executed a deed, and Seymour made and executed a quit claim deed con-

veying said property from themselves to Haldeman and placed the deeds in escrow with Wells, Fargo & Co., at Denver (f. 48 and 107), the quit claim being executed by Seymour because he claimed some equitable interest in the property (f. 48).

Haldeman made further payments as follows:—about March 8, 1887, $13,392.50, and on March 22, $6,311.50 (f. 47).

About May, 1887, Haldeman began to request that Seymour and Elder come over to Europe (to London) and it was agreed between them that if Haldeman would make another payment they would go over.

Such other payment amounting to $14,490 was made by Haldeman on July 6, 1887 (f. 47), and Seymour and Elder (.f 48), and Pell (f. 95) left New York on July 23, 1887, and arrived at London on Sunday afternoon July 31 (f. 48 and 95).

Previous to their starting to London, Haldeman requested Elder to have the deeds made direct to the company (f. 48 and 25-26), and this was done immediately before they started for London in July 1887, and they were so made to save one transfer, and were likewise deposited with Well, Fargo & Co., at Denver (f. 48 and 107).

It may be here stated that there were several groups or syndicates of persons in Great Britain who had advanced, and thereafter did advance or were concerned in advancing money to Haldeman to make the varions payments to Seymour.

Of these, one group called the "Scotch Syndicate," consisted of Maj. Robert M. McKerrell (in some places in the record erroneously spelt McCarroll, or otherwise), who was afterwards chairman of the company, Col. Alexander Wilson, William Brown and Shaw—Harvey (f. 60).

Another called the "Maloney" (f. 50) or "Stanley Syndicate" (f. 62), consisted of ——— Maloney (sometimes otherwise spelt in the record) and ——— Stanley (f. 60).

Another called the "Birmingham" (f. 54) or "English Syndicate" (f. 95 and 102) consisted of Arthur Rust and ——— Johnson (f. 54 and 60).

It may also be stated at this time that Seymour had Elder accompany him to England as his special friend, adviser and assistant in conducting these negotiations, and that the many months Elder was in England, and the various trips he made there and to Paris were made as such representative, and Elder was the person upon whom Seymour relied to keep him informed as to the progress of affairs, and upon whom he mainly relied for the successful issue of the negotiations (f. 51–68–74–79. Ex.

3. f. 122. Ex. 4. f. 123. Ex. 8. f. 126) and this fact appears also from the whole course of dealing between the parties.

Upon the arrival of Seymour and Elder in London negotiations were begun, and the Scotch and the Birmingham or English syndicates were notified of the arrival, and in a few days Haldeman, Seymour and Elder went to Scotland where they met Brown, Wilson and others of the Scotch Syndicate, and thence they returned to London where active negotiations were entered upon (f. 95). Seymour was informed that the money which had been paid had been raised, and further payments were to be raised, by syndicates (f. 50 and 54), and he insisted that he be presented to the syndicates in person (f. 48 and 50), and he was presented to two of the syndicates, the "Scotch" and "Maloney" (f. 49 and 50).

There was a great deal of talk from day to day and several skeleton drafts of contracts were presented and considered (f. 49). Among other things Seymour insisted that $100,000 in cash be paid him (f. 49 and 95). Maloney did the negotiating and figuring (f. 96), and as the result of all the negotiations he, as the representative of his syndicate (f. 96), and probably in conjunction with Haldeman (f. 50) drew up a contract in writing between Seymour and Haldeman, known as the "August 18, Contract," which was dated Aug. 18, 1887, and is as follows (f. 6–7):—

"Memorandum of agreement made this eighteenth day of August, 1887, between John Haldeman of 38 Old Jewry in the City of London, and J. Fenton Seymour of Denver, Colorado, in the United States of America, acting for himself and partners the owners of the Slide and Spur Gold Mines situate in Boulder County, Colorado, United States of America, the said John Haldeman agrees to pay forthwith the sum of ten thousand pounds sterling in addition to twelve thousand five hundred pounds already paid on account of the purchase money of the said mines, such sum of ten thousand pounds to be paid through Messrs. Wells, Fargo & Co., (who now hold the deeds of the said property in escrow) and to be held by them and paid over to the said J. Fenton Seymour upon the titles of the said mines being registered in the name of the "Slide and Spur Gold Mines," limited, free from all charges and incumbrances, and the said J. Fenton Seymour hereby undertakes and agrees to register the titles as above upon the said ten thousand pounds being deposited with Messrs. Wells, Fargo & Co.

The said J. Fenton Seymour hereby undertakes and agrees to have the "Slide Mine" worked to its full capacity, and after the

due and legal registration of the title to the said company, he further agrees that the returns from the said mine shall be cabled weekly to the said company in the form of cables sent herewith, it being understood and agreed that the money value of the first weekly return so cabled shall not be less than the sum of two hundred pounds sterling, and that each successive weekly return shall show a moderate increase over that sum.

The said J. Fenton Seymour hereby undertakes and agrees to take the control of the management of the said property until the payments hereinafter mentioned are completed, and it is understood and agreed that he shall retain such control until the said payments are completed. The said John Haldeman agrees that three hundred and seventy-five thousand shares, of one pound each, in the above company, shall be transferred to Mr. Clarence Preston Elder as trustee, and deposited with Messrs. Wells, Fargo & Co , in London, to the intent that the said shares shall be held as security for the due performance of the following conditions, viz:—

First—The payment of ten thousand pounds in addition to the above mentioned twenty-two thousand (J. F. S.) five hundred pounds within three days (J. F. S.) after the receipt of the third successive weekly return from the mine as hereinbefore mentioned, and

Second—The balance of forty-five thousand pounds at the expiration of ten days after the receipt of eight successive weekly returns of the nature and value above specified. Upon the completion of the above mentioned payments, the said J. Fenton Seymour hereby undertakes and agrees to release the above mentioned three hundred and seventy-five thousand shares less seventy-seven thousand and five hundred to which he is entitled, and also less the number of shares sold with the consent and under the supervision of the aforesaid Clarence Preston Elder acting for the said J. Fenton Seymour.

In case the weekly returns cabled from the mine shall from any cause fall below the sum of two hundred pounds sterling per week. then in that case such returns shall not count, but the time for paying the second ten thousand pounds and the balance of forty-five thousand pounds shall be extended pro rata, but should the successive weekly returns amount to two hundred pounds sterling (per week J. F S.) with a moderate increase weekly as hereinbefore mentioned, and the said John Haldeman shall make default in the payment of the balance of forty-five thousand pounds, then in that case the said J. Fenton Seymour

shall have the right to forfeit the amounts already paid and to claim the above mentioned three hundred and seventy-five thousand shares.

As witness the hands of the said parties the day and date first above written.

(Signed) J. FENTON SEYMOUR,
JNO. HALDEMAN."

Haldeman had an arrangement with the "Scotch" syndicate to furnish the money to pay the cash payment of ten thousand pounds as provided in the August 18, contract (f. 58–59).

Brown and Major McKerrell represented this syndicate, and, besides having little faith in the ability of Maloney's syndicate to assist in raising funds, had serious objections to the August 18, contract (f. 96)

The original August 18, contract had in fact been drawn up several days before (f. 61). The "Scotch" syndicate insisted that if they paid ten thousand pounds they should be protected against the consequences of a forfeiture of the stock under the August 18, contract, should Haldeman not be able to make future payments. The matter was thoroughly discussed between Seymour and Elder, and it was finely consummated by the execution of a written contract between Seymour, Elder as trustee, and the representatives of the Scotch syndicate, dated August 19, 1887, (f. 50–53–59–69–70–96). The agreement was as follows (f 77–78):

"Minute of an agreement between J. Fenton Seymour and Clarence Preston Elder, both of Denver, United States of America, and Robert Mure McKerrell, of Hillhouse, Ayrshire, and William Brown, Solicitor, Hamilton, Lanarkshire:

"Whereas, By an agreement made on the eighteenth day of August, eighteen hundred and eighty-seven, between the said J. Fenton Seymour, for himself and others, owners of the Slide and Spur Gold Mines, in Boulder County, Colorado, United States of America, of the one part, and John Haldeman, of 38 Old Jewry, London, of the other part, it is stipulated and agreed that three hundred and seventy-five thousand fully paid up shares, of one pound each, of and in the Slide and Spur Gold Mines, Limited, are to be issued by the said company to the aforesaid John Haldeman, in payment in full for the said mines against a clean transfer of the property to the company, free of all incumbrances and liabilities whatsoever, and the due registration of the said transfer, and which shares are immediately, upon the same being so issued, to be transferred to the said Clarence Preston Elder, a

director of the company, as trustee for behoof of all concerned, and the said shares are to be then deposited with Wells, Fargo and Company, merchants, London, in the name of the said Clarence Preston Elder, as a guarantee for the fulfillment by the said John Haldeman of the terms of the said agreement, so far as incumbent upon him, all as fully set forth in the said agreement: Now it is hereby specially covenanted and agreed that, notwithstanding the terms of the aforesaid agreement, seventy-five thousand fully paid shares, of one pound each (being Nos. 300,001 to 375,000, inclusive), of the said total number of three hundred and seventy-five thousand shares, shall be held by the said Clarence Preston Elder and the said Wells, Fargo and Company, for and on account of the said Robert Mure McKerrell and William Brown, and the said seventy-five thousand shares shall be delivered and transferred to them or their nominees immediately upon the cash payment mentioned in the aforesaid agreement being received by the said J. Fenton Seymour or his heir and successors, or his or their agent; and, further, it is hereby specially provided and agreed that, in the event of the terms of the aforesaid agreement not being implemented by the said John Haldeman, and in consequence thereof the said shares deposited with Wells, Fargo and Company, or part thereof becoming claimable by or on account of the said J. Fenton Seymour, or his heirs or successors, yet, nevertheless, the said seventy-five thousand shares in that event shall be forthwith delivered and duly transferred by the said Clarence Preston Elder and Wells, Fargo and Company to the said Robert Mure McKerrell and William Brown, or their nominees, notwithstanding any failure on the part of the said John Haldeman to implement the said agreement or any portion of the same.

"In testimony whereof this agreement is subscribed by the parties hereto, all at London, on the nineteenth day of August, in the year eighteen hundred and eighty-seven.

"J. FENTON SEYMOUR, [SEAL.]
"CLARENCE P. ELDER, [SEAL.]
"ROBERT MURE MCKERRELL, [SEAL]
"Of Hillhouse,
"WM. BROWN. [SEAL]

"Signed sealed and delivered by the aforesaid J. Fenton Seymour and Clarence Preston Elder and Robert Mure McKerrell and William Brown, in the presence of

"H. E. GILBERT,
"*Secretary pro tem. Slide and Spur Gold Mines, Ld.,*
"*38 Old Jewry, London.*"

The representatives of the two syndicates and Haldeman insisted that no settlement of the matter could be made unless the property was conveyed to the corporation, to comply with the laws of Great Britain, so as to enable the money for the balance of payments to be raised by subscription for the shares. The parties there knew they could not dispose of the shares unless the company had title to the property free and clear of all incumbrances, and so it became one of the conditions of the contract that the property should be vested in the company free and clear of all incumbrances, before the Scotch syndicate would advance the money, and they also refused to advance the ten thousand pounds until they were assured that they would be protected from loss should Haldeman fail to comply with his contract of August 18. (F. 50, 53, 59, 96, 99, 100.) Seymour had been informed that the title of the property must be in the company before it could issue shares (f. 60), and he knew that the Scotch syndicate would not advance any money unless that was done (f. 59), and that the money was put in largely by reason of the personal presence of himself and Elder (f. 53), and he was to receive the money only on condition that the title be so placed. (F. 53.)

Seymour very candidly states all these facts.

While, as we have said, the August 18 contract had, in fact, been drawn up several days before that date, yet it was redrawn and was signed and executed in its present shape at the time of the execution of the contract of August 19, and they were both part of one transaction. (F. 61, 62, 64.) Seymour left England for America almost immediately after the contracts were signed (f. 97, 64), leaving Elder in London to look after matters there.

In the meantime, on May 16, 1887, Haldeman entered into a contract with one Harry Edward Gilbert, which was as follows: —(f. 19 20):

"An agreement made this sixteenth day of May, one thousand eight hundred and eighty-seven, between John Haldeman, of 38 Old Jewry, in the city of London, Gentleman (hereinafter called the vendor), of the one part, and Harry Edward Gilbert, of 12 Holford Road, Richmond, Surrey, Gentleman (but without personal responsibility), for and on behalf of a company intended to be incorporated under the Limited Liabilities Companies Acts, one thousand eight hundred and sixty-two to one thousand eight hundred and eighty-three, under the name of The Slide and Spur Gold Mines, Limited (hereinafter called the company), of the other part.

"Whereas, The vendor is the beneficial owner of the mining properties known as the Slide and Spur Mines situated in the Gold Hill Mining District, Boulder County, Colorado, United States of America, and of certain timbered land situate in the same place, more fully described in the report of Mr. Edward O. Wolcott, dated the fourteenth day of January, one thousand eight hundred and eighty-seven, and the plan therewith, a copy of which report and plan is attached hereto; and

"Whereas, the vendor is desirous that a company should be incorporated under the Companies Acts, one thousand eight hundred and sixty-two to one thousand eight hundred and eighty-three, for the purpose of purchasing, developing and working the said properties, being the company for and on behalf of which the said Harry Edward Gilbert joins in this agremeent;

"Now it is hereby agreed as follows:

"1. The company shall be incorporated within one calendar month from the date hereof, and the nominal capital of the company shall be four hundred thousand pounds, divided into four hundred thousand shares of one pound each.

"2. The vendor shall sell to the said Harry Edward Gilbert, for and on behalf of the said company, when formed, the said properties, and also all that the ore which has been raised since April, one thousand eight hundred and eighty-six, with the exception of one hundred and seventy-three and a half tons, reported to have been sold, and all rights and benefits appertaining thereto, and all the share, estate, right, title and interest of the vendor therein, free from all encumbrances. And the vendor hereby undertakes with the said Harry Edward Gilbert that the same are now absolutely free from encumbrances, and shall, at the expense of the company, cause the same to be duly conveyed to and vested in the said company, the company (at their own expense) to be duly registered as the proprietors of the properties on the completion of the purchase for the sum of three hundred and seventy-five thousand pounds (£375,000), that is to say, as to eighty-five thousand pounds (£85,000) in cash within fourteen days after the first allotment of shares, or as soon thereafter as may be agreed on, and upon the property, free from encumbrances, becoming to the satisfaction of the said company or its legal advisers vested in the said company, or as it may direct, under a good and perfect title, and as to one hundred and thirty-three thousand pounds (£133,000), in fully paid up shares of the

company, of one pound each, numbered from one to one hundred and thirty-three thousand, both inclusive, and as to the balance of one hundred and fifty-seven thousand pounds (£157,000) in cash, or fully paid up shares, or part in cash or part in shares, at the option of the directors of the said company. Provided always, and it is hereby agreed, that all such fully paid shares or part thereof, as hereinbefore mentioned, shall be allotted as fully paid shares to the vendor, or his nominees within one calendar month after the first allotment of shares, and provided the property shall then be vested in the company, or otherwise as hereinbefore provided. Provided always, and it is hereby agreed, that the company, in making cash payments to the vendor, shall reserve out of the shares subscribed for a minimum of five thousand (5,000) shares towards providing working capital.

"3. The memorandum and articles of association and the prospectus shall be submitted to the vendor for his approval before issue.

"4. The vendor shall give to the proposed company all the necessary information and assistance for the information of the same and for the carrying on of its intended operations.

"5. The vendor will discharge all payments and claims for commissions, negotiations, services, brokerages, advertising, printing, legal, engineer's report, and other expenses, preliminary or otherwise, up to the time of the first allotment of shares, and the vendor shall indemnify the company and the directors thereof from and against all proceedings, claims and demands in respect of the said preliminary expenses, but the vendor shall be at liberty to make any arrangements with agents or others, under this clause, for providing said expenses, so that such arrangements do not involve any liability on the company.

"6. On the adoption of this agreement, with or without modification, by the company, the said Harry Edward Gilbert shall be discharged from all responsibility, and, if the company so require, a fresh agreement shall be entered into between the vendor and the company in the same terms as this agreement and in substitution therefor.

"7. Any dispute or difference which may arise touching these presents, or any matter or thing arising thereunder or in connection with, shall be referred to arbitration, in the usual

way, as provided by the Common Law Procedure Act one thousand eight hundred and fifty-four.

"As witness the hands of the said parties on the day and year first above written.

"JNO. HALDEMAN,
"HARRY EDWARD GILBERT.

"Witness:
"T. A. DENNISON,
"*Solicitor, 4 Eastcheap.*"

The corporation was organized, as we have said, on May 24, 1887 (f. 5 and 18), and the directors named therefor were McKerrell, Pollock, Steele, Elder and Haldeman (f 91), though Haldeman, being interested in a contract which required negotiations with the company, did not act till after the company had passed upon the contract (f. 92 and 102) as hereafter explained, and no stock was issued till then (f. 92).

On September 10, 1887, the contract of August 18 was brought to the attention of the board of directors, and the Gilbert agreement, just above set out, was likewise presented to them. The company did not adopt the Gilbert agreement (f. 92), but entered into a tripartite modifying agreement with Haldeman and Gilbert, which modifying agreement was as follows (f. 23 and 24):

"An agreement made the tenth day of September, one thousand eight hundred and eighty-seven, between The Slide and Spur Gold Mines, Limited, hereinafter called "the company," of the first part, John Haldeman, of 38 Old Jewry, in the city of London, Gentleman, of the second part, and Harry Edward Gilbert, of 12 Holford Road, Richmond, Surrey, Gentleman, of the third part:

"Whereas, By an agreement dated the sixteenth May, one thousand eight hundred and eighty-seven, and made between the said John Haldeman, of the first part, and the said Harry Edward Gilbert, for and on behalf of the company then intended to be and which has since been formed, under the Companies Acts, one thousand eight hundred and sixty-two to one thousand eight hundred and eighty-six, of the other part, the said John Haldeman agreed to sell and the said company to purchase certain mines and property, in the said agreement described, upon the terms and subject to the stipulations and conditions therein contained;

"Now these presents witness, and it is hereby agreed, as follows:

"1. The said recited agreement is hereby subject to the mod-

ifications thereof hereinafter contained, adopted by and shall, subject to such modifications, be binding on the company and on the said John Haldeman in the same manner, and be read and construed in all respects as if the company had been in existence at the date thereof and had been party thereto, instead of the said Harry Edward Gilbert.

"2. Clause 2 of the said agreement shall be cancelled, and the following clause shall be substituted in lieu thereof, viz: The said John Haldeman shall sell to the said company the said lands, mines and properties referred to in the said agreement of the sixteenth day of May, one thousand eight hundred and eighty-seven, and the freehold thereof, free from all incumbrances and liabilities, whatsoever, and also all that the ore which has been raised since April, one thousand eight hundred and eighty-six, with the exception of one hundred and seventy-three and a half tons, reported to have been sold, and all water and other rights, easements, benefits and appurtenances belonging or appertaining thereto, and all the estate, right, title and interest of the said John Haldeman therein, and also all machinery plant and effects, live and dead stock, on or belonging to the same or any part thereof, free from all incumbrances and liabilities whatsoever, and the said John Haldeman shall make out and show to the satisfaction of the said company, or such person as they may appoint, a perfect, complete and indisputable title to the said lands and premises, free from all incumbrances and liabilities whatsoever, according to the laws in force in Colorado, in the United States of America, who shall certify that the said title is free and unincumbered, and that the said John Haldeman has full right and power to sell the same to the said company, freed from all incumbrances and liabilities whatsoever, but subject to any government taxes, charges or impositions which shall be properly payable by the said company for the purpose of vesting and registering the said properties in the company. And the said John Haldeman shall, at the expense of the company, execute and procure to be executed all deeds and documents, and do and procure to be done all acts and things which the directors may be advised to be necessary for vesting the said mines and premises in the company as aforesaid, and at their expense for procuring the registration of the company as the proprietors and owners of the said mines and premises according to the customs and law of Colorado aforesaid at the time applicable to the district where the said mines are situate, for and in consideration of the absolute allotment to him of three

hundred and seventy-five thousand one-pound fully paid shares in the said company, the said shares to be alloted to the said John Haldeman or his nominees, so soon as the directors shall have been satisfied that the said mines and property as aforesaid have been transferred to the company free from all incumbrances and liabilities whatsoever, that the deeds of transfer have been duly registered and recorded in the office of the County Clerk and Recorder of Boulder County in the State of Colorado, in the United States of America, and that the company has been put and is in absolute working possession of the property as aforesaid, with such good, perfect, free, indisputable and unimcumbered title as aforesaid. Provided always, and it is hereby agreed that all such fully paid shares or part thereof as hereinbefore mentioned shall be allotted as fully paid shares to the said John Haldeman or his nominees without any further liability of any kind whatsoever attaching thereto.

The said Harry Edward Gilbert shall henceforth be discharged and freed from all liabilities and obligations whatsoever incurred by him under the said agreement of the sixteenth day of May, one thousand eight hundred and eighty-seven, in the same manner as if he had not been a party to that agreement.

In witness whereof, the parties hereto of the second and third parts have hereunto set their hands, and the party of the first part have caused their common seal to be hereunto affixed in the presence of two directors the day and year first above written.

Directors—R. M. McKERRELL, of Hillhouse,
J. KEATING POLLOCK.
Seal of the Company.
G. W. HUTCHINSON, *Secretary*.
JNO. HALDEMAN,
H. E. GILBERT.

Witness to all the above signatures, Lionel Blugley, 4 Eastcheap, E. C., Solr."

All agreements made by a corporation or joint stock company are required by the laws of Great Britain to be registered (f. 92–93) and this tripartite agreement was duly registered (f. 92).

Thereupon, on September 10, an issue of 375,000 shares of stock was made to Haldeman, and by him transferred to Elder, trustee (f. 92–99–103), and was the stock to be held, and which was held by Elder, trustee, under the contracts of August 18 and 19, and were duly deposited with Wells, Fargo & Co., (Ives & Allen being their agents, f. 105) at London, in accordance with the contracts, (f. 99–102) and Seymour notified thereof (f. 89, ex. K.).

The ten thousand pounds to be paid by the Scotch Syndicate, were paid (f. 99) September 6, 1887, (f. 22) and Seymour received it after his return to Denver (f. 8–58), and the deed for the property was delivered and recorded in Boulder County, Colorado, on September 6, 1887 (f. 25–26).

Hutchinson, who was secretary of the company from the begining of active operations in September, 1887, till November, 1888 (f. 91), and who was present during all the negotiations before the board as the result of which the stock was issued, says the 375,000 shares were issued to Haldeman in full payment for the property (f. 92).

Seymour was asked when making his deposition (f. 58).

"Q. Did you ever at any time agree to take stock in payment for this property—the stock of this company in payment for this property."

(Objection, &c).

"A. No, Sir; I never agreed to any thing of the kind, different from the contracts, (meaning those of August 18 and 19). I have talked verbally with Mr. Elder in connection with the matter, but I never agreed to do any thing of the kind."

In the negotiations leading up to the contract of August 18, Seymour had made certain representations as to the amount that the mines could produce (f. 50), and in the contract itself as well as by the testimony it appears that Seymour was to have the charge and management of the property, and was to make weekly returns of the amount of the production (f. 6 and 51). Such returns were to be cabled in forms furnished him (f. 6–59–64), and the forms themselves are Exs. D and E, at f. 79 and 81.

The object of making such returns according to those forms was that the parties at London thought they could dispose of the shares by subscription by the public (f. 50–60–62–63), and Maloney had represented that he could raise the money (same folios), and was the one who was to place the stock (f. 96) and thereby pay the balance of the purchase price in money so that they might obtain the remaining shares (f. 100). Such shares were offered to the public but only a few were subscribed for (f. 92).

When the returns began to come from Seymour, strenuous and angry objection was made that they were not in the form agreed upon and furnished, and that they could not be used for the purpose intended (f. 97). Seymour was informed of the objections (f. 64 to 67).

Elder, in London, made an effort to have Seymour send the cables in proper form, and to that end on September 23, 1887, cabled Seymour as follows (f. 86. Ex. H. f. 105).

"Increase quantity weekly. Reports not made direct company. Harms you. Gives extra time London. See agreement."

Under same date Seymour cabled Haldeman (f. 73) as follows (f. 83. Ex. C):

"Have cabled eight hundred dollars more than contract calls for. Has London syndicate paid ten thousand pounds, per agreement? If not, expect it will."

In answer to a cable from Seymour enquiring why shares had not been deposited with Wells, Fargo & Co., Elder cabled him (f. 106) on Sept. 30, as follows (f. 89. Ex. K.):

"Shares deposited strict accordance agreement, all parties satisfied, write fully."

On October 12, 1887, Elder again cabled Seymour (f. 105) as follows (f. 84. Ex. G.):

"Grants returns must state tons and values else won't count."

Elder also engaged in correspondence, for the purpose of inducing other parties to prevail upon Seymour to send cables in the prescribed form. All the efforts on his part to this end, were made because the English parties claimed additional time for further payments, because the cables were not so sent, under August 18, contract (f. 97)

Suspicions that Maloney could not place the shares, and perhaps Elder's opinion that the board was not a strong one, finally led to open rupture between Maloney and all the other parties, and in proposals to reorganize the board (f. 98 and 113-114). Accordingly on October 22, 1887 (f. 105-106), Elder cabled Seymour as follows (f. 88, Ex. J.):

"Maloney has grossly deceived his Birmingham people. This has brought the whole of the Scotch and Birmingham people together. Maloney and all his crew have been thrown overboard. The Scotch and Birmingham people are in full accord, and have come to a complete understanding, and it is the desire of both parties that Birmingham people be placed upon same footing as Scotch. This gives us a stronger backing amongst monied men, and gets rid of all shysters, even Haldeman, if present contract not fulfilled enabling me upon forfeiture to place shares even more advantageously with Scotch and Birmingham direct. Brown added to board, and Colonel Wilson will join as deputy chairman upon your accepting above con-

ditions. If accepted, cable me at once so I can complete all arrangements before chairman leaves in a week for America."

In October, 1887 (f. 110), Seymour cabled Elder as follows (f. 90. Ex. L.):

"English have not done as agreed, we have done more. Will until November 1; must then forfeit. We will protect Scotchmen as agreed. Tired of English trifling."

In the latter part of October, 1887, Seymour sent G. Q. Richmond to England to keep Seymour posted as to the situation of affairs and to assist Elder (f. 55), furnishing Richmond with proper credentials, as follows (f. 112 and f. 123, Ex. 4):

"The Sunshine Gold Mining Company (Limited), Sunshine, Colorado.

DENVER, Oct. 21st, 1887.

G. Q. Richmond, Esq., Att'y-at-Law.

Dear Sir:—It is agreed between J. F. Seymour and G. Q. Richmond that he goes to London as our attorney to act with C. P. Elder in settlement of the Slide and Spur sale, Mr. Elder now being trustee. Mr. Richmond is to advise with Mr. Elder and to represent our interest. Truly yours,

(Signed), J. F. SEYMOUR,
WM. G. PELL,
J. L. SANDERSON."

And transmitting to Elder the following notification of Richmond's coming (f. 122, Ex. 3):

"DENVER, Oct. 21, 1887.

"*Hon. C. P. Elder, London, England.*

"Friend Elder:—We thought it would be advisable to have Mr. Richmond on the ground there so as to advise with you as to our interest in the closing of the sale and to give you any assistance that you may require to relieve you of any responsibility, only as trustee, as we talked. He understands that you and Haldeman has option on our seventy-seven thousand shares of stock, at figures agreed on by you and me (eighty-five cents on the dollar). You understanding the matter fully; we have instructed Mr. Richmond to work with you, and hope this business may be closed up shortly, and you can say good-bye to old England and return shortly to your native country.

(Signed) "J. F. SEYMOUR."

Richmond arrived in due course of time and he and Elder began efforts to bring the matter to a settlement (f. 98).

Mr. Rust of the Birmingham Syndicate had furnished it money to enable Haldeman to make payment of the first fifty thousand

dollars that had been paid on the purchase price of the property (f. 54), and after Seymour had arrived in America, he had received communications from Haldeman and Elder that the Birmingham Syndicate were dissatisfied with the contracts of August 18 and 19, by which the Scotch Syndicate had been protected and their syndicate not, and that the Birmingham Syndicate desired to be placed upon the same footing as the Scotch. This Seymour, at that time, declined to do (f. 54).

Elder cabled Seymour that the chairman, McKerrell, and this Mr. Rust would soon leave England for Colorado, and suggested that it was the desire of both parties that the Birmingham Syndicate should be placed upon the same footing as the Scotch (f. 54 and f. 88 Ex. J.). Seymour never met Rust until he came to Denver (f. 54-70), but they did come over to Colorado, probably about the latter part of October or the first of November, 1887, and Seymour and Rust made mutual propositions as to adjustment of Rust's claim.

Rust proposed that if Seymour would give him forty-five thousand shares on the same basis that the Scotch syndicate had theirs, he would consider it a full settlement for all the money he had put in This proposition, Seymour says was not accepted, but he proposed that if Rust would furnish Haldeman for payment to Seymour fifty thousand dollars to make the deferred payment provided for under the August 18 contract, he, Seymour, would give him the forty-five thousand shares on account of former payments, and another forty-five thousand shares in consideration of the additional payment, if Haldeman and Maloney were satisfied (f 54 55 and 70 71). Rust then went back to England to see what could be done about carrying out this proposition (f. 54).

Elder and Richmond were likewise working to settle up the matter in England, but had succeeded in accomplishing nothing (f. 99), and Rust did not accomplish anything toward carrying out Seymour's proposition to him, till finally Seymour became dissatisfied, and cabled Elder and Richmond that he would himself go over to England with McKerrell.

But they cabled Seymour that it would be unwise for him to come, and stated that Richmond would come over to America to see Seymour with propositions of settlement. Seymour, therefore, did not go, but Richmond came over and met Seymour at St. Louis, (f. 55). Richmond had no proposition that was satisfactory, in its entirety, to Seymour, (f. 55-71), and he

was sent back to England to renew negotiations armed with a power of attorney, (f. 57), which was as follows:

"Know all men by these presents, that I, J. L. Sanderson, for myself, and J. F. Seymour, for myself and as attorney-in-fact for Ellen R. Seymour and W. G. Pell, do hereby constitute, make and appoint Hon. Clarence P. Elder and G. O. Richmond, our true and lawful attorneys-in-fact, for us, and in our name, place and stead, hereby authorizing the said Elder and Richmond to make full and complete settlement and compromise with John Haldeman and others who have or may claim any interest in and to any shares of stock of the Slide and Spur Mining Company, Limited, or in the Slide and Spur mines; to transfer and and deliver any and all shares of stock of the Slide and Spur Mines, Limited, as to them may seem best and prudent for our interests.

" We hereby authorizing our said attorneys to withdraw from the possession of Ives and Allen or Wells, Fargo & Company, London, all of said shares of stock upon the payment of one hundred and sixty thousand dollars ($160,000) cash, payable to order of said Wells, Fargo & Company, as per contract, January 18, 1887.

" We also authorize our said attorneys to contract for transfer of the possession and management of said Slide and Spur Mines to Slide and Spur Mining Company, Limited, upon the payment of said sum of one hundred and sixty thousand dollars ($160,000) as above set forth, hereby ratifying and confirming all that our said attorneys may do or cause to be done in the premises, it being understood that the power of substitution is not vested in said attorneys, and that they shall act jointly in the execution of the powers vested in them.

" Witness our hands and seals this 20th day of February, A. D. 1888."

Along about November, 1887 (f. 117 and Ex. J.) there was talk of reorganizing the Board of Directors. Elder says he must have notified Seymour of prospective changes, because he wrote him fully on every Saturday afternoon (f. 117), and Seymour was notified of the conditions upon which he would go upon the board and made no objection (f. 115).

It is certain that Richmond told Seymour at St. Louis of such prospective change, and that it was contemplated that Seymour should go upon the board. Seymour consented conditionally, he says, but such conditions were made only in private instructions to Richmond (f. 75).

The trouble in the board culminated about the holidays of 1887, when a special meeting was called and two of the directors —Steele and Pollock— voted themselves salaries (f. 117) and on January 2, 1888, Elder cabled Seymour as follows (f. 120): "Meeting postponed until fifth; Steele and Pollock called special meeting Friday; voted salaries to themselves and censured McKerrell; will close deal if let alone." In answer to that (f. 119), Seymour cabled Elder on January 3, as follows (f. 126, Ex. 8): "We depend on you for cable of situation; our trade nothing to do with directors; only *Holdman* (Haldeman), Brown, Rust; this for you alone; answer immediately."

Subsequently in the early part of January 1888, Elder cabled Seymour, so far as pertains to the reorganization of the board, "Seymour on board, Wilson, deputy chairman," (f. 116). The board had not yet as a matter of fact been changed, but this was to notify him of the proposed change in pursuance of previous notifications (f. 117), and Seymour at no time made any objection according to Elder (f. 115–118–120), though Seymour says he did object when he saw Elder in July, 1888 (f. 76).

The board was reorganized, and in June, 1888 (f. 114) (or more probably in April, 1888, f. 92) Haldeman retired and Seymour was elected director in his place, and Steele and Pollock also went off the board, and Wilson and Rust took their places (f. 114).

It does not appear that Seymour took any active part on the board, but in December, 1888, he became managing director of the company in Colorado (f. 76), and continued as such.

On Richmond's return to London, about the first of March, 1888, after his interview with Seymour in St. Louis, he and Elder set about the work of settling up the business, and had conferences with Wilson, Rust, Haldeman and others, but were able to make but little headway.

It was discussed between Richmond and Elder as to the advisability of serving notice on Haldeman that Seymour elected to forfeit the stock held in trust by the contract of Aug. 18, but, because he had hopes that the money would be raised to pay Seymour, Elder for some time advised against such action (f. 109), but when these hopes failed, Richmond and Elder obtained from Haldeman to Seymour (f. 112–113–119) a release of all claim which Haldeman had on the stock, which release was as follows (f. 123. Ex. 5).

"38 Old Jewry, London, E. C., April 26, 1888.

Known all men by these presents, that I, John Haldeman, being unable to fulfill my contract of August 18, 1887, with J.

Fenton Seymour, hereby voluntarily release J. Fenton Seymour and his associates from any and all liabilities thereunder, and surrender all and every claim by virtue of said contract which has or may accrue to me thereunder; this to be in force on and after this date, "(signed)" John Haldeman."

Subsequently, for some reason, a second similar release was executed by Haldeman (f. 118–119) which appears as exhibit W, as follows (f. 126).

"THE SLIDE AND SPUR GOLD MINES, LIMITED,
"38 OLD JEWRY, LONDON, E. C., July 4, 1888.

"Know all men by these presents, that I, John Haldeman, being unable to fulfill my contract, of date August 18, 1887, with J. Fenton Seymour, do hereby voluntarily relinquish said J. Fenton Seymour and his associates, from any and all liability thereunder, and surrender all and every claim, by virtue of said contract, which has or may accrue to me thereunder. This to be enforced on and after February 20, 1888.

(Signed) "JOHN HALDEMAN."

Some time about the first of May, 1888, Richmond returned to Denver (f. 99).

On May 6th Richmond cabled Elder, from Denver, as follows (f 125, ex. 7):

"Board reorganized, as per par. 1. Second, cash payment of five thousand pounds within fifteen days. Third, possession of mine to company. Seymour made general manager for one year for company. Fourth, proceeds to be placed with Wells-Fargo until purchase price paid. Fifth, no stock to be issued until purchase price paid except as required for purchasers price as per par seven and eight 6th accept nine ten twelve and thirteen par three optional with company will admit any reputable expert for thirty days after payment of five thousand pounds expenses paid by party wishing."

This referred to propositions that Richmond had brought over for Seymour's consideration (f. 119½). On May 24th, Elder cabled Richmond as follows (f. 127, Ex. N):

"Explain Seymour forfeit of Haldeman contract makes owners own over one hundred and eighty thousand shares; new board; mine worked; returns sent; gives shares cash value. I strongly urge this solution of business being accepted; refusal of above and troubles following must rest upon owners' heads. Answer."

And, in answer to this (f. 119), Richmond cabled Elder as follows (f. 124, Ex. 6):

"All know situation. Parties will not comply, and assume all responsibility of litigation. Can do no more."

Seymour says that though Haldeman had never personally given him any notice that he could not comply with the contract of August 18, yet he had done so indirectly. Seymour also notified Elder and Richmond that he would elect to declare the stock forfeited under the contract, but says he never did so elect, and that he did not procure the above release from Haldeman, and that Richmond and Elder had no authority to do so, beyond what was in the power of attorney, (f. 56-57.) What disposition was made of the stock will appear hereafter.

On June 23, 1888 (record is printed 1885,) Elder cabled Seymour as follows: "Been with Scotch, Rust, all week. Board changed; Seymour, director; Wilson, chairman. Sail New York Thursday. See Moffat tomorrow," (f. 75)

On June 30, Elder left London for America. At New York he met Seymour (f. 76 and 100,) and they proceeded to Denver, arriving there July 18, (f. 100.) At Denver they met Sanderson (who claimed some equitable interest in the property), and Griffin, Seymour's bookkeeper, and the latter proposed dealing with a French syndicate he professed to be in communication with. The result was that Seymour and Griffin left for Paris, and Elder followed them in a week after, (f. 101), where they arrived sometime about August or September, 1888, (f. 51-101.)

The French Syndicate matter came to nothing Elder made several trips to London and induced Col. Wilson and Mr. Rust to accompany him to Paris, where the business was talked over with Seymour, but nothing came of it (f. 100-101 and 52). Mr. Johnson, who represented the Birmingham Syndicate, also talked with Seymour about the matter (f 100). In fact, Seymour met representatives of two of the syndicates in Paris (f. 52), and finally Seymour accompanied Elder to London where Seymour also met the two syndicates who were urging that a proposition of settlement should be made (f. 52). He also, in London, met Mr. Allen (of Ives & Allen, who was to be a director of the company, and one of the holders of the stock in trust), Mr. Hutchinson, the secretary of the company, and D. C Haldeman. Matters were again talked over but nothing was done, and Seymour and Elder returned to Paris. In about ten days, Brown, who represented all the syndicates (f. 60) went to Paris to see whether he could effect some kind of a settlement (f. 101).

Elder and Richmond had informed Seymour that they had agreed for Seymour that Rust should have forty-five thousand shares, protected in the same manner as the Scotch Syndicate's shares were protected, under the contracts of August 18 and 19, and as this accorded with propositions discussed between Seymour and Rust at Denver (f. 54-55), Seymour agreed that Rust should have the forty-five thousand accordingly (f. 56). When Brown arrived in Paris the whole matter was discussed between Seymour, Griffin, Elder and Brown (f. 69 and 101), and thereupon the following agreement was entered into on October 5, 1888, called the Paris agreement (f. 9):

HEADS OF AGREEMENT PROPOSED BY COLONEL SEYMOUR.

"1. On payment of £3,500 to Wells, Fargo and Company, we agree to start the mine at work, in name of the company, said sum to the credit of Colonel Seymour.

"2. The company to send cashier and engineer (if they think fit), and Colonel Seymour to be resident managing director for the period of one year.

"3. All proceeds to be transmitted to company bankers.

"4. Mr. Elder to deliver 75,000 shares to the Scotch subscribers and 45,000 shares to Mr. Rust on payment of said sum.

"5. The balance of the shares to remain in Mr. Elder's hands, as trustee, until a final settlement can be made, inside of three months after acceptance of this proposition.

"6. Colonel Wilson, or the parties who advance the £3,500, to receive 15,000 shares from Mr. Elder on the final settlement (not later than the three months), and meantime receive a legal obligation from Mr. Elder, as trustee.

"7. On resignation of Mr. Elder, as a director, Mr. Allan to be elected a director.

"8. The £3,500 to be paid so soon as the company can register the transfer of the 75,000 shares.

(Signed) "J. F. SEYMOUR."

Seymour and Griffin immediately returned to Colorado and Elder returned to London and thence to Colorado, arriving there about October 31, 1888, (f. 101.)

Col. Wilson advanced the £3,500, (f. 69), as provided in the Paris agreement about December 15, 1888, (f. 9,) and upon joint orders signed by Seymour and Elder in accordance with the contracts of August 18 and 19, and of the Paris agreement, of the 375,000 shares held in trust, 75,000 were delivered to the Scotch

syndicate, 45,000 to Rust and 15,000 to Col. Wilson for the £3,500, (f. 73-103.) The balance of the 375,000 shares remained in trust as before, (f.109.)

About the first of November, 1888, cables were received by Elder at Denver from Haldeman in London, making proposition to buy some of the stock held in trust, (f. 108.) One of these cables dated November 1, 1888, (f. 110,) is as follows, (f. 121, Ex. 1): "Cable cash price fifty thousand shares also twenty-five thousand monthly during five months first block very low balance advancing monthly."

The proposition was shown Seymour, and at his request, (f. 108,) after talking the matter over, an answer was sent, that Haldeman could have 50,000 shares at five shillings, or one dollar and a quarter, a share; to which Haldeman replied that the price was higher than Seymour asked others, (f. 110).

On November 17, 1888, Haldeman again cabled, as follows, (f. 122, Ex. 2): "Can take fifty thousand shares four shillings cash shares locked balance name."

Nothing further seems to have been done about these propositions.

About December 11, 1888, Seymour became managing director of the company on the property, (f. 76,) and on February 16, 1889, this suit was begun, and resulted in a decree for vendor's lien for the sum of $258,000 and interest, etc.

PLEADINGS.

The bill alleges, in substance, that appellees, being the owner of the Slide and Spur Lode Mining Claims, gave an option to purchase the same to John Haldeman, who was acting for himself and also for the appellant company, thereafter to be formed.

That Haldeman paid certain sums towards the purchase price thereof before August, 1887, and that in August, 1887, a new arrangement or readjustment of affairs was made between appellees and Haldeman, acting for himself and appellant, by virtue of which it was agreed that a deed was to be delivered to the company conveying to it the property, and that the company

was to issue 375,000 shares of stock to Haldeman who was to put the same in pledge to secure the payment of the balance of the purchase price, and that Seymour was to keep possession of the property as additional security for the payment of the purchase price.

That 10,000 pounds was soon afterwards paid, for and on behalf of Haldeman and the company.

That in October, 1888, it was further agreed, but without its being intended to modify the original agreement of Aug. 1887, that 3,500 pounds more should be paid. and that the balance of the purchase price should be paid within a short time. That no further payments were made, but that all theretofore made had been credited to the company.

That no security had been taken for the deferred payments except as stated, and that appellees had in no way waived a right to a vendor's lien.

Prayed that such lien be established and that the property be sold to pay the same.

The answer denied that in any of the transactions or negotiations between appellees and Haldeman, said Haldeman was acting in any degree for the company, or for anyone else than himself.

Denies that the company bought the property from the appellees, or had any arrangement thereabout with appellees.

Alleges that appellees sold the property to Haldeman, who sold it to the company for 375,000 shares of the fully paid stock thereof.

That such sale for said stock was made with the knowledge, consent and procurement of appellees and that such stock was taken in pledge by appellees from Haldeman to secure the balance of the purchase price due from Haldeman.

That said stock was procured to be issued for the purpose of enabling the same to be sold upon the market, and it was expressly agreed that the sale of said property for said stock should be made free from all liens whatsoever.

That deed was made directly from appellees to the company, instead of to Haldeman and thence to the company, merely to save one transfer, and was made to enable the company to issue its stock as aforesaid.

That appellees had procured the advancement of, and payment of, money, upon the faith of the fact that the title of the property was in the company, free and clear of all liens, and that, by rea-

son of their acts, doings and agreements in that regard, they are estopped from asserting a vendor's lien.

That security was taken for deferred payments, so as to waive any right they might have to a vendor's lien.

That the circumstances surrounding the sale show that such lien was waived and abandoned, and was never meant to be asserted.

Denies that any payment was made for or on behalf of the company, or that the company was required to make payments.

General replication in equity.

There are many minor allegations in the bill and answer, but this statement, we believe, sufficiently indicates the general scope of the case.

THE ERRORS ASSIGNED ARE:

I.

The Court erred in holding that appellant was purchaser of the real estate in question, from the appelles, and in finding and decreeing that appellant was indebted to appellees for any part of the purchase money.

II.

It erred in holding that the consideration money or price of said real estate had not been fully paid by appellant.

III.

It erred in not holding that the consideration or price agreed to be paid by appellant had been fully paid.

IV.

It erred in holding that there existed in favor of appellees and against appellant, a vendor's or grantor's lien upon the premises in question.

V.

It erred in holding that appellees were not estopped from asserting, as against appellant and its shareholders, the existence of such alleged lien.

VI.

It erred in the rendition of entry and decree in favor of appellees, when the same should have been rendered and entered in favor of appellant and against appellees, dismissing their bill.

ARGUMENT.

I.

We contend that the circumstances surrounding this transaction and sale show that the appellees waived or abandoned any right to a vendor's lien, because:

A. The objects, purposes and ends for which the sale was made are inconsistent with the intention to retain such lien.

B. Other and collateral security was taken for the purchase price.

A.

In the leading case of *Gilman* v. *Brown, et al*, 1 Mason 191, it was said by *Webster*, in argument, (p. 199) that "there may be a relinquishment of this lien; and the evidence of such relinquishment may result from the nature of the transaction and the circumstances attending it."

Amory said (p. 204) that the lien is raised only by implication; "and where other circumstances resist this implication, showing that the parties did not mean to rely on the estate sold, for security, such lien is waived," and the fact that the parties designed that the lands should be sold again in small parcels showed an intention not to rely upon the lien, because such sales could not be made, or not so advantageously made, if purchasers were aware that such lien was to be asserted.

Their language is quoted not as authority, but as tersely and correctly embodying the principles approved by all the decisions and text writers.

Story, J., said, (p. 218): "In applying the doctrine to the facts of the present case, I confess, that I have no difficulty in pronouncing against the existence of a lien for the unpaid part of the purchase money. The property was a large mass of unsettled and uncultivated lands, to which the Indian title was not as yet extinguished. It was, in the necessary contemplation of all parties, bought on speculation, to be sold out to sub-purchasers, and ultimately to settlers. The great objects of the speculation would be materially impaired and embarrassed by any latent incumbrance, the nature and extent of which it might not always be easy to ascertain, and which might, by a subdivision of the

property, be apportioned upon an almost infinite number of purchasers. It is not supposable, that so obvious a consideration should not have been within the view of the parties; and viewing it, it is very difficult to suppose they could mean to create such an incumbrance."

On appeal, this principle was re-announced, 4 Wheat., 255.

Where lands were conveyed to enable the purchaser to raise money thereon by mortgage for the purpose of paying the purchase money, the lien is abandoned.

Clower v. *Rawlings*, 9 Smedes & M., 122.
Strong v. *Strong*, 126 Ill., 301.
Springfield, etc., R Co. v. *Stewart*, 51 Ark., 285.

The lien may be waived or relinquished by express agreement, or by conduct plainly inconsistent with an intention to retain it.

Coos Bay Wagon Co. v. *Crocker*, 4 Federal R., 577.

In *Fisk* v. *Potter*, 2 Abb. Ct. of App. Dec., 138 (S. C., 2 Keyes, 64), it appeared that a railroad company had an agent for the purpose of acquiring lands for right of way and other purposes. The company had executed a "blanket" mortgage, with covenants of further assurance as to after acquired property, to secure an issue of bonds, which were designed to be sold to raise funds to complete the road. The agent, with knowledge of this fact, sold a parcel of his own land to the company, and, not being paid, asserted a vendor's lien. The Court said: "Upon the point in this case, that an equitable lien of a vendor for unpaid purchase money is deemed to be waived by acts of the vendor, from which it may be presumed that he did not intend to retain his lien, such facts as are above stated are controlling. It is inconsistent with good faith on his part that he should retain a secret lien under such circumstances, against such persons as he knew already had, or who would advance their money, on the faith of a clear record. Such acts are incompatible with an intent on his part of retaining a lien; they evince that he did not, at the time of making the conveyance, contemplate the holding of a lien. It is not honest, it is not good faith on his part, that he should retain such a lien against subsequent *bona fide* bondholders."

McGonigal v. *Plummer*, 30 Md., 422, says that *prima facia* the lien exists, but it being "the mere creature of a Court of Equity, existing in the nature of a secret trust, it should not, for that

reason, be implied and maintained when it would operate as a means of deception or in prejudice of good faith."

Cordova v. *Hood*, 17 Wall, 1; holds that there is a vendor's lien where lands have been sold and the purchase money is unpaid but that there may be a waiver of the lien either express or implied.

Fisher v. *Shropshire*, 147 U. S., 133, holds that such lien may be defeated if the grantor or vendor do any act manifesting an intention not to rely on the land for security, but this must be an act substantially inconsistent with the continued existence of the lien and cannot be inferred from the mere fact that the parties may not have contemplated the assertion of the lien in the first instance.

From *Hubbard* v. *Buck*, (about 95 Ala., but not yet reported, except in 13 Southern Rep., 364.) it appears that John E. and William J. Buck, were brothers, owning lands as tenants in common.

On November 14, 1890, W. O. McMahon and William J. Buck, co-partners as McMahon & Buck, excecuted a mortgage on a certain 4,000 acres of land to Hubbard Bros., the consideration being the extension of a past debt of $2,700, and a cash loan of $1,500. Hubbard Bros., at the time of the mortgage knew that the legal title to one-half the land was in John E. Buck.

On November 17, John E. conveyed to William J., and on November 28, William J. conveyed the lands to the co-partnership of McMahon & Buck. McMahon knew that William J. made no payment of the purchase money for the one-half to John E. Whatever interest McMahon and Buck had or acquired in the lands insured to the benefit of Hubbard Bros., under their mortgage.

John E. brought an action to establish and enforce a vendor's lien.

The proof showed that when McMahon and Buck formed their co-partnership it was agreed that McMahon was to put into the firm $8,000 in cash, and William J. was to put in 4,000 acres of land, at $2 per acre, and that John E. knew the terms of the co-partnership and had deeded his one-half of the lands to William J. to enable him to comply with the co-partnership agreement.

It was said by the Court that a vendor's lien is presumed to exist where conveyance of land is made and the purchase price

has not been paid, "unless the terms of the contract of sale show it was purposely excluded, and the vendor relied upon the personal credit of the vendee, or other security was taken and relied upon by the vendor," and it was held that the circumstances of this transaction showed that it was not contemplated that such lien should be reserved.

The contract of sale for these mines was made in England, but the law of that country on this subject seems to be the same as that of Colorado.

Their Courts have, however, settled the law there, upon principles and circumstances peculiarly applicable to this case.

In re Brentwood Brick and Coal Co., 4 Ch. Div., 562 (S. C., 20 Monk's Notes, 758, where reference is had to a note on p. 696, wherein the cases are collected), it was held that where a sale of lands was made to an incorporated company, which was expected to sell its shares to raise money, or to encumber the property therefor, such action was inconsistent with the retention of a vendor's lien.

In *Kettlewell* v. *Watson*, 21 Ch., Div. 703, it was said: "The execution of the conveyance with a receipt for the whole purchase money endorsed on it, would, if the deed had been given up to the purchasers so as to enable them to show a clear title, have been a most material and conclusive circumstance in favor of postponing the lien," but the lien was enforced upon facts which the Court deemed satisfactory.

On appeal, 26 Ch., Div. 501, the decree of the lower Court was reversed, and it was held that where the land had been conveyed and deeds delivered with knowledge that the grantee proposed to subdivide and re-sell it, there was a waiver of the vendor's lien.

That case also holds that the effect of their registry laws was not to impair the right to a vendor's lien.

The above authorities sufficiently indicate the principles we contend should be applied to the present phase of this case.

The proof upon this point, shows that in October, 1886, appellees, through Seymour, their agent, gave an option to John Haldeman to purchase these properties for $750,000, one half of which was to be paid for in cash and one half in the stock of a company to be formed. That Haldeman paid very considerable cash payments on the purchase price, but along about July, 1887, became unable to make further payments, and that for the

purpose of making further adjustments in that regard, requested Seymour to come to London, and that Elder accompany him. They went to London, arriving there in the last of July, 1887.

In May, 1887, for the purpose of organizing a corporation, as had been contemplated by the original option, Haldeman entered into a contract with one Gilbert, who contracted, not personally, but in behalf of the company to be formed, that the appellant corporation should be organized with a capital stock of 400,000 shares, of one pound each, and that such company should purchase said property from Haldeman, upon the basis of the contract between Haldeman and Gilbert, or upon the basis of a modification of that contract, as might be agreed upon. The contract provided for large cash payments, with the option in the company to make other payments in stock.

Appellant company was organized on May 24, 1887, but beyond the mere organization and the issuance of a few shares to the directors to qualify them as such, no further action was taken by the company, and matters were in this situation when Seymour and Elder arrived in London in July.

This corporation was to be and was organized under the Companies Acts 1862–1883. That act provides that a register shall be kept of all mortgages and charges specifically affecting property of the company, and that there shall be entered in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. Buckley on the Companies Acts (3d. ed.) p. 151 § 43. True, this section does not render void mortgages or charges not so registered, but a penalty is fixed upon the officers of the company for failure to make such entries.

The act also provided that the prospectus shall contain full information as to the condition of the affairs of the company. Buckley, p. 537, § 38. These provisions are for the purpose of requiring full information to be furnished as to every circumstance of contract, mortgage or charge that could guide purchasers of stock as to the value thereof. See notes and cases collected under said sections. The Companies Acts was not introduced in evidence, but was often referred to, and it is probably permissible to cite it.

Elder accompanied Seymour as his special friend, adviser, counseller and manager in the negotiations.

Upon their arrival Seymour was advised that it was proposed

to raise money for further payments from a "Scotch Syndicate," and negotiations were entered into between Seymour, Elder, Haldeman and the syndicate looking towards the devising some plan of settlement.

Seymour represented that, under his management, the mines could be made to pay certain returns. It was finally agreed that the matter should be put into such shape that the stock of the company should be offered to the public for the purpose of raising funds to make payment of the balance of the purchase price, and it was supposed and believed that one Maloney was in a situation to sell said stock. Cables were to be sent by Seymour to the company, as to the proceeds of the mines, to assist in selling the same. Seymour insisted that, as a condition precedent to his entering into such an agreement, he should be paid, on behalf of appellees, £10,000 sterling, which was to be advanced by the Scotch syndicate.

He was informed of the fact, and agreed thereto, that the company could not issue its stock, and that purchases thereof would not be made unless the free, uncharged, absolute title to the property was in the company; that the stock would represent a right to participate in the ownership of the property and its incidental benefits and profits, and that it must be, in fact, what it purported to be. Seymour, for appellees, agreed fully and explicitly to these conditions, and himself testifies that an absolute deed to the property should be and was made for that purpose. The plan finally devised to carry out the intention and agreement of the parties was this: The company was to issue to Haldeman, in full payment for the mines, free and clear of all liens, charges and incumbrances whatsoever, 375,000 shares, or fifteen-sixteenths of the entire capital stock, fully paid up. These shares were to be, by Haldeman, transferred to Elder, as trustee, and were to be by him deposited with Wells, Fargo and Company, at London, subject to the joint order of Elder and Seymour, "to the intent that the said shares shall be held as security for the due performance" of conditions as to payment of the balance of the purchase money. When the balance of the purchase money was paid, then all said shares were to be released, except such as might then be sold, and except 77,500 shares to which appellees were entitled as the stock payment on the purchase price of the property.

It was also provided that in case deferred payments were not made that Seymour "shall have the right to forfeit the amounts

already paid and to claim the above mentioned 375,000 shares." As part of this agreement, and as a precondition as above stated, the Scotch subscribers were to pay 10,000 pounds. This they had refused to do unless the title of the property was vested in the company free and clear, as above stated, and, because they were not willing that their money should be jeopordized by the failure of Haldeman to make future payments, it was agreed between Seymour, acting for appellees, and the Scotch Syndicate, that if they made the payment of the 10,000 pounds, 75,000 of the shares so deposited in trust should not become forfeit by reason of any failure to carry out Haldeman's agreement, but that such shares shall be held for and delivered to the Scotch Syndicate. To still further intensify the meaning and intent of Seymour in conveying the property to the company, the agreement with the Scotch subscribers expressly interprets the arrangement made with Haldeman and recites, that, "whereas, by an agreement made on the 18th day of August, 1887, between the said J. Fenton Seymour, for himself and others, owners of the Slide and Spur Gold Mines, in Boulder County, Colorado, United States of America, of the one part, and John Haldeman, of 38 Old Jewry, London, of the other part, it is stipulated and agreed that 375,000 fully paid up shares, of one pound each, of and in the Slide and Spur Gold Mines, limited, are to be issued by the said company to the aforesaid John Haldeman in payment in full for said mines against a clean transfer of the property to the company, free of all incumbrances and liabilities whatsoever, and the due registration of the said transfer, and which shares are immediately, upon the same being so issued to be transferred *to the said Clarence Preston Elder*, a director of the company, as trustee for behoof of all concerned, and the said shares are to be then deposited with Wells, Fargo & Co., merchants, London, in the name of the said Clarence Preston Elder, as a guarantee for the fulfillment by the said John Haldeman of the terms of said agreement so far as incumbent upon him, as fully set forth in the said agreement." Then follows the conditions as to the non- forfeiture of the 75,000 shares, notwithstanding Haldeman's default.

Seymour immediately sailed for America, bringing with him forms in which cables should be sent to the company as to returns from the mines.

The evidence, even that of Seymour himself, shows conclusively that the two written agreements above referred to as constituting the final agreement of the parties, were signed and executed at one and the same time and were part of the same

transaction. Intrinsic evidence on the face of the agreements themselves shows this fact.

It will be observed that all negotiations so far were made with Haldeman or with persons interested with him in the stock—that the company had so far taken no action.

Deeds had been made from appellees to Haldeman, and deposited in escrow with Wells, Fargo & Co, at Denver, but at the request of Haldeman, for the purpose merely of saving one transfer, from Haldeman to the company, these deeds were taken up and a new one made conveying the property directly from appellees to the company, and was likewise so deposited with Wells, Fargo & Co., at Denver, immediately before Seymour and Elder started for London in July, 1887. The fact that the deed was so made in no wise changed the fact that the sale was made to Haldeman.

On September 6, 1887, the Scotch Syndicate paid the 10,000 pounds as provided by their agreement, and Seymour received the same, and thereupon the deed was taken out of escrow, delivered to or for the company and was recorded in Boulder County, Colorado, on Sept. 6, 1887. The deed contains this clause, "and the said Ellen R. Seymour and William G. Pell, * * for themselves, their heirs, &c., do covenant, &c., * * that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of whatever kind or nature soever," warranting peaceable possession and title.

At a meeting of the directors of the company—the first meeting, so far as appears, since the organization—held on September 10, 1887, the Gilbert and Haldeman contract of May, 1887, and the Seymour and Haldeman contract of August 18, 1887, were laid before the board for its action.

Mr. Elder, who had assisted in, and was mainly instrumental in, bringing about the negotiations which resulted in the final agreement, was present as a director of the company, and took part in shaping the action thereof in this behalf. The directors did not adopt the Gilbert agreement, but modified that agreement so as to make it exactly conform to the Seymour and Haldeman agreement of August 18, for the purpose of carrying out, or enabling the parties to carry out, their arrangement. Thereupon 375,000 shares of the capital stock of the company were issued to Haldeman, and by him transferred to Elder, and by him deposited with Wells, Fargo and Company, to be held,

and which were held, upon the trusts aforesaid, and Seymour was notified thereof.

Haldeman, though a director, took no part in the affairs of the company till after this date.

But Maloney had overestimated his ability to dispose of the shares, and disagreements and disputes arose as to whether Seymour had sent the cables as to the results of working the mines in proper shape to aid in such sales, and these and other matters resulted in open rupture among those at London interested in this stock and this transaction.

Mr. Rust had advanced money to Haldeman to make payment of the first $50,000 that had been paid under the option, and, through these disagreements or otherwise, seems to have become aware of that part of the contract which protected the Scotch subscribers from forfeiture. At any rate, Rust became solicitous to have what money he had paid secured in like manner as the Scotch. Elder communicated this fact to Seymour, and, in October, 1887, Rust came to Colorado and himself urged that 45,000 shares should be held for him, on account of his payments, under the same conditions as the 75,000 shares were held for the Scotch. Counter propositions were made by Seymour, among them that if Rust would pay $50,000 more he might have, with the consent of Haldeman and Maloney, 90,000 shares, 45,000 on account of the old payment and 45,000 for the new.

Rust returned to England to see what he could do in reference to these propositions.

No more payments were made under the contract of August 18 and 19, and in October, 1887, the appellees and Seymour sent G. Q. Richmond to England to assist Elder in bringing affairs to a conclusion, but Richmond and Elder were not able to accomplish anything, and, in February, 1888, Richmond returned to America to consult with Seymour, and, as a result, among others, of this consultation, Richmond was returned to England furnished with a power of attorney to himself and Elder, "authorizing the said Elder and Richmond to make full and complete settlement and compromise with John Haldeman and others who may have or may claim interest in and to any shares of stock of The Slide and Spur Mining Company, Limited, of or in the Slide and Spur Mines; to transfer and deliver any and all shares of stock of the Slide and Spur Mines, Limited, as to them may seem best and prudent for our interests."

Upon Richmond's return, and acting upon what they believed was their power under said power of attorney, they procured from Haldeman a forfeiture, surrender and release of all right, title and interest he might have in the 375,000 shares held in trust by Elder.

Seymour says that the only power Richmond and Elder had in regard to such forfeiture was that contained in the power of attorney, and he interprets that as not granting such power. At any rate Haldeman never afterwards asserted any in or to such shares, but Seymour's actions thereabout will appear hereafter.

Richmond and Elder accomplished nothing further, and first Richmond and afterwards Elder returned to America. Elder met Seymour at New York and it was arranged that they should go to Paris, France, to see what disposition could be made of the matter there. They went, arriving there some time previous to October, 1888. Elder informed Seymour that he and Richmond had promised for Seymour that Rust should have the 45,000 shares protected as the Scotch were, and he urged the business reasons for such settlement, that it would settle disputes, cause moneyed men to be interested in the success of the enterprise, insure the payment of the balance of the purchase money, and, generally, would place the matter on a proper basis.

After long negotiations a proposition was made by Seymour and accepted by the others in interest that some one should pay Seymour for appellees £3 500 sterling; that thereupon the 75,000 shares should be delivered to the Scotch subscribers; the 45,000 shares should be delivered to Rust, and 15.000 should be delivered to whoever furnished the £3,500; that the whole matter should be accepted and carried out within a limited time, and that the balance of the shares not disposed of should be held in trust as before, subject to final settlement between all parties in interest.

Seymour had, during the troubles arising between Maloney and other parties in interest, in the fall of 1887, been agreed upon as a director of the company, and he was chosen as such director in the fore part of 1888, but had not yet taken any part in the affairs of the company, but if this Paris agreement or proposition was accepted he was to take possession of the mines for the company and to work and manage them as managing director. The £3,500 pounds were paid by Col. Wilson of the Scotch Syndicate, and the 75,000, 45,000 and the 15,000 shares of stock were transferred and delivered to the parties entitled thereto

upon the joint order of Seymour and Elder, and in strict accordance with the agreement.

This Paris proposition is crudely drawn and seems to have been originally intended as the basis of a formal agreement. From this vagueness it was contended by appellees below, that the fifth clause thereof means that the whole agreement was conditioned upon the fact that final settlement was made within three months; that is, that the entire balance due as deferred payments should be made within that time, otherwise the whole proposition failed. That this is not the proper construction thereof is apparent from the facts that the 75,000 shares mentioned therein had been already secured to the Scotch subscribers by the contracts of Aug. 18 and 19, 1887; no consideration passed or was to pass from Rust other than such as are heretofore mentioned for the shares to be issued to him; the 15,000 shares were to be issued to whoever advanced the 3,500 pounds, and such person might or might not be of those who already had an interest therein; and, finally, Seymour and the others did themselves, within a short time thereafter, put a practical construction upon the proposition, because the fifth clause, if it qualifies every part of the contract as was contended, qualifies as well the acts to be done by Seymour as the others; whereas, when the 3,500 pounds was paid early in December, 1888, Seymour took possession of and worked the mines for the company as managing director, and the shares of stock were issued on the joint order of Seymour and Elder exactly in conformity with the proposition.

Afterwards Haldeman desired to purchase some of this stock from Seymour, and Seymour fixed the price at which the shares might be bought.

Throughout the whole case there is not a particle of testimony that any claim or demand upon, or negotiation with the company, was made or carried on, previous to the institution of this suit in February, 1889, but on the contrary every act or contract was done or made with Haldeman or the owners of the stock, or persons interested in the stock, and every written document and all the evidence relates to getting the deferred payments out of the stock and not from the company.

This state of facts are as pertinent even if the sale were made directly to the company, as appellees allege in their bill, as they are if the sale was made to Haldeman and title taken in the name of the company, as the answer alleges and the proof shows.

B.

The contract of Aug. 18 and 19, expressly says that the stock was taken and held in trust "to the intent that the said shares shall be held as security for the due performance" of the conditions of the contract as to making deferred payments; that said shares were to be issued by the company to Haldeman "in payment in full for said mines against a clean transfer of the property to the company, free of all incumbrances and liabilities whatsoever, and the due registration of said transfer, and which shares are immediately, upon the same being so issued to be transferred to the said Clarence Preston Elder, * * as trustee for behoof of all concerned, and the said shares are to be then deposited with Wells, Fargo & Co. * * in the name of * * Elder, as a guaranty for the fulfillment by the said John Haldeman of the terms of said agreement so far as incumbent upon him, as fully set forth in the said agreement."

The bill itself virtually contains the same allegations, but seeks to escape the effect thereof by alleging that the sale was made to the company.

But, leaving out of consideration the deductions to be drawn from the subsequent forfeiture of the pledged stock, or, if such forfeiture be denied, the subsequent dealings of Seymour with such stock, the evidence is very clear that it was taken as security.

Taking collateral security, unless the merely personal obligation of the vendee, which is construed as a means of payment, is a waiver of a vendor's lien.

Brown v. *Gilman*, 4 Wheat., 255;
S. C., 1 Mason, 191;
Cordova v. *Hood*, 17 Wall., 1;
Chilton v. *Braiden's Admrx.*, 2 Black, 458;
Fisher v. *Shropshire*, 147 U. S., 133;
Marshall v. *Christmas*, 3 Hump., 616;
Kauffelt v. *Bower*, 7 S. & R., 64;
Conover v. *Warren*, 1 Gilman, 498;
Clower v. *Rawlings*, 9 Smedes & M., 122;
Coos Bay Wagon Co., v. *Crocker*, 4 Fed, 577;
Dudley v. *Dickson*, 14 N. J. Eq., 252;
Selby v. *Stanley*, 4 Minn., 65;
Young v. *Wood*, 11 B. Mon., 123;

Stuart v. *Harrison*, 52 Iowa, 511;
Kyle v. *Bellinger*, 79 Ala., 516;
Neal v. *Speigle*, 33 Ark., 600;
Strong v. *Strong*, 126 Ill., 301;
Crans v. *B'd Comrs. Hamilton Co.*, 87 Ind., 162;
Fish v. *Howland*, 1 Paige Ch., 20.

The general doctrine is laid down in 2 Wash. Real Prop., pp. 94–96, as above, and 2 Jones on Liens, Sec. 1061, *et seq.* The doctrine is too well settled to require even so extended citations.

Coming specifically to the security taken in this case—that a pledge of stock waives the lien, we cite:

Jackson v. *Stanley*, 87 Ala., 270;
Ilett v. *Collins*, 103 Ill., 74.

Especially is the lien waived where the pledged stock might or might not be sufficient to pay the balance of the purchase price, depending on the state of the market, and where the pledgee had absolute dominion over the stock.

Nairn v. *Prowse*, 6 Ves. Jr., 752.

And where efforts have been made to collect moneys from the stock.

Ilett v. *Collins*, 103 Ill., 74.

Though the presumption is that the lien is waived by taking other security, this presumption is open to rebuttal, but the burden is on the vendor to rebut the presumption,

McGonigal v. *Plummer*, 30 Md., 422;

Though the testimony of the vendor, if positive, may be sufficient for this purpose.

Cordova v. *Hood*, 17 Wall., 1.

In this case, however, such suggestions would seem to have no place, because the vendor not only alleges and proves that such stock was taken as collateral, but in answer to a question as to whether he had ever waived the right to a vendor's lien, answered that he had never agreed to anything on this point different from the contracts alleged and proven.

A vendor's lien is recognized in Colorado.

Francis v. *Wells*, 2 Colo., 660;

And Federal Courts enforce such liens when consistent with jurisprudence of States wherein the action is brought.

Fisher v. *Shropshire*, 147 U. S., 133;

But the assertion of such liens should be closely scrutinized and limited in States where there is a recording system and not extended beyond the fair implications of the statutes or decisions of the Courts.

Rice v. *Rice*, 38 Federal Rep. 858.

If upon the one hand, a waiver of the lien cannot be inferred from the mere fact that the parties may not have contemplated the assertion of the lien in the first instance;

Fisher v. *Shropshire*, *super*;

Yet, upon the other, equity cannot relieve from the consequences of an election once made, by restoring and re-establishing the lien,

Jackson v. *Stanley*, 87 Ala., 270;
Richards v. *McPherson*, 74 Ind., 158;
2 Wash., Real Prop., p. 96;

And agreements subsequent to the sale cannot create a vendor's lien.

Cordova v. *Hood*, *supra*.

We urge that the lien was equally waived whether the sale was made to Haldeman and the title simply taken in appellant's name to save one transfer, or whether it should be considered as having been made directly to the company; because, in the latter case the stock gave a right to the owner thereof to participate in the corporate affairs of the company, and to share in its profits and in a division of its assets, but the shares are in no just sense the obligations of the company that are regarded as a mere mode of payment.

II.

We contend, also, that appellees are estopped from asserting a vendor's lien.

The following cases, heretofore cited, are in point:

Strong v. *Strong*, 126 Ill., 301;
Fisk v. *Potter*, 2 Abb. Ct. of App. Dec., 138 (*S. C.*, 2 Keyes, 64);
McGonigal v. *Plummer*, 30 Md., 422;

Wherein it was said that since the lien is "the mere creation of a Court of Equity, existing in the nature of a secret trust, it

should not, for that reason, be implied and maintained, where it would operate as a means of deception, or in prejudice of good faith."

Hubbard v. *Buck*, (about 95 Ala. reported in 13 Southern Rep. 364).

In *Reily* v. *Maimi Exporting Co.*, 5 Ohio 333, one Hafer had recovered a judgment against the Cincinnati Manufacturing Company, and had levied an execution upon certain lots of ground in Cincinnati. This was the first lien. Three other judgments were recovered, that in favor of defendants being one of them. The lots had been sold under some of these judgments, but a dispute arose as to priority of lien among them. It was agreed that the sales should be set aside, and that the lots were to be subdivided in order to effect better sales, and that sale should be made under one of the judgments in favor of Lytle and Avery, and "that upon such sale a clear title should pass to the purchaser, and that the priorities of the liens under the several judgments and levies, should be tried in such mode as might be thought advisable, and the proceeds of sale appropriated accordingly." Under this agreement the lots were sold on execution upon the Lytle and Avery judgment, and the Bank of the United States become the purchaser, and subsequently conveyed the lots to Reily. By common consent the Hafer judgment was first satisfied out of the proceeds of the sale, and in the controversy between the three judgments, that of the Miami Company was declared not entitled to participate in the proceeds. This company thereupon issued an execution upon its judgment and sought to subject the lots to sale thereunder. Reily brought action for injunction. The Court said: "It would be a gross fraud upon the purchaser, if either of the parties, having thus induced a purchase upon the assurance that a *clear title should pass*, were permitted to set up their prior lien against the lots, and a title against that passed by their own agreement to the purchaser."

Appellees certainly agreed that a deed should be delivered and the title conveyed free and clear of all incumbrance whatsoever—free and clear to the full extent that the stock might be put upon the market without any latent liens whatsoever, and that the company might issue 375,000 shares of fully paid up stock in full payment therefor, and they would look to the stock for payment under a pledge thereof.

It is certain that the company, as well as all other parties in interest, so understood it. It would be to allow appellees to entrap the directors into the commission of a fraud as well as to a subjection to a penal statute, to hold that the stock might be issued under the circumstances disclosed in this case, and then that appellees might still assert a vendor's lien.

And this is so, whether the sale was made to Haldeman and the title taken in the name of the company, or whether the sale was made to the company itself.

It is also very clear that so far as the 75,000 shares issued to the Scotch Syndicate are concerned that there is such an estoppel, because they expressly refused to make any payment or advance any money, except upon the express precondition that there should be no such lien. The subsequent issue of 45,000 shares to Rust, and the 15,000 shares to Wilson stand upon exactly the same reasons.

The estoppel in favor of the Scotch Syndicate and the others is available in favor of the company, or the company as the representative of all the stockholders. There may be an estoppel from the mere issuance or transfer of stock, as to right to issue it, or title thereto, or other kindred questions, but here the right to the stock implied a right to participate in all the functions pertaining to stockholders, including the management of the mines by and through the company, and not merely a right to hold and own the property itself in the proportion that such shares bear to the total capital stock.

If the estoppel is valid as to the Scotch Syndicate or the others it is impossible to so apportion and appropriate the equities as to preserve to such stockholders their rights. This can only be done by maintaining the integrity of the corporation to the full measure that the estoppel in favor of such stockholders would imply.

Thus in *Jones* v. *Bolles*, 9 Wall. 364, Bolles sued on behalf of himself and all other stockholders, no other, however, uniting with him.

It was alleged and proven that Jones had represented that a certain corporation owned a valuable mining lease, and that the same was free and clear from incumbrances. Upon such assurances Bolles, acting as trustee for several persons purchased a large amount of the stock of the corporation. Afterwards Jones was about to assert a claim for rents and for purchase money, Bolles filed bill seeking injunction against the assertion of such claim.

Decree that Jones be enjoined from asserting his claim *against the company*—not merely against Bolles and those for whom he was trustee, and to whom the representations were made.

See also 2 *Jones on Liens*, § 1091;
2 *Herman on Estoppel*, § 837.

We respectfully submit that the decree should be reversed with directions to dismiss the bill.

HARVEY RIDDELL,
Solicitor for Appellant.

FILED,
MAR 6 1894
JAMES H. McKENNEY,
CLERK.

IN

The Supreme Court

OF THE

United States.

THE SLIDE AND SPUR GOLD MINES (LIMITED),
Appellant,
vs.
ELLEN G. SEYMOUR AND WILLIAM G. PELL,
Appellees.

284

BRIEF FOR APPELLEES.

WILLARD TELLER,
Solicitor for Appellee.

C. J. KELLY, Printer, Denver.

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THE SLIDE AND SPUR GOLD MINES (LIMITED), *Appellant*,

vs.

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BRIEF FOR APPELLEES.

The brief of appellants filed herein contains a very full statement of the facts set forth in the record, and as it is not intended to controvert such statement, no further statement is required on part of the appellees. But for the sake of convenience, and as a starting point, we epitomize the facts thus: In 1886 appellees offer to sell the Slide and Spur Mines for $750,000 to John Haldeman—$337,500 in cash and $312,500 in common shares of a company

to be thereafter formed. May 24, 1887, Haldeman procured the formation of an incorporated company in London, with capital of 400,000 pounds sterling, Haldeman being one of the directors (Appellant's Brief, p. 12), and the object was declared to be to obtain title to the mines in question, as set forth in an agreement between Haldeman and one Gilbert of May 16, 1887. In the meantime, and up to July 6, 1887, Haldeman paid on the purchase price the sum of $58,444 (12,500 pounds) (Appellant's Brief, p. 4), and on the 18th of August, 1887, J. Fenton Seymour, acting in behalf of appellees, made another contract with Haldeman, in writing, about payments, to wit: That Haldeman should pay forthwith 10,000 pounds into the hands of Wells, Fargo & Co., in London, to be by them paid to J. Fenton Seymour upon title to the said Slide and Spur Mines, being registered in name of appellant, "free from all charges and incumbrances," the said Seymour agreeing to register said titles on receipt of said 10,000 pounds, and to have the Slide Mine worked to its full capacity, and that "the returns from said mine shall be cabled weekly to the company, and that the—

"Said J. Fenton Seymour hereby undertakes and agrees to take the control and management of the said property until the payments hereinafter mentioned are completed, *and it is understood and agreed that he shall retain such control until the said payments are completed.*"

The said John Haldeman "agrees that 375,000 shares, of one pound each, in the above company, shall be transferred to Clarence Preston Elder as *trustee, and deposited with* Wells, Fargo & Co., *to the interest that said shares shall be held as security for the due performance of the following conditions,*"

viz.: Then follows statements of balance due and time of payment, to wit: 55,000 pounds—only a small portion of which was paid within the time fixed. The contract further provided, that if Haldeman made default in these payments, "then, and in that case, the said J. Fenton Seymour shall *have the the right to forfeit the* amount already paid and to claim the above mentioned 375,000 shares." (Appellant's Brief, pp. 5 and 6.)

This agreement was laid before the Board of Directors of the company September 10, 1887, and was made the occasion for a tripartite agreement between Haldeman, the company, and said Gilbert, which resulted in a change in the agreement of May 16, 1887, between Haldeman and Gildert, about the formation of the company, as the company was then formed, and Haldeman was one of the Directors (Appellant's Brief, p. 12). Hence the knowledge the company had of the contract of August 18, 1887, is fully shown. October 5, 1888, the time for payment under the contract of August 18, 1887, having long since expired, and the payments not made, J. Fenton Seymour, acting for appellee, made in writing the propositions found in Appellant's Brief, p. 23, and all the acceptance shown of these propositions is that *somebody* paid 3500 pounds. Appellant says (brief, p. 23): Wilson paid it, but the record does not show more than a supposition of *Seymour*, the agent, but *no* proof beyond such supposition (Record, fols. 69 and 60).

The above facts, it is believed, are all that the record shows in any wise essential to a proper determination of this case, and all that appellant has in any manner discussed, except that of the contract, Exhibit "A" (Record, p. 53), which coun-

sel for appellant appears to think has some bearing on the question discussed by him, whether "the objects, purposes and ends for which sale was made are inconsistent with the intention to retain such lien." The fact of this agreement is believed to be of no importance in this case, because—

First—It neither by terms or implication attempts to bind appellees, and if it is held to bind them in the place of J. F. Seymour, it was in a matter wholly personal and affects the company, its rights and its liabilities in no respect whatever. It is made between parties bargaining about the stock of the company, in which all were more or less interested. Elder as trustee, Seymour as one of the parties secured by the stock, and McKerrell and Brown as parties expecting to buy some of the stock, and providing that that in certain contingencies a portion of the stock might be released from the operation of the trust, and this contract, as appellant contends, was a part of the same transaction as that between Haldeman and Seymour of August 18th (Appellant's Brief, p. 9), and hence was the contract of Haldeman, McKerrell and Elder, all three directors of the company, and was by express terms to affect and vary the contract of August 18, 1887, only in providing for a release of 75,000 shares of stock, leaving the contract that provided that the deeds might be delivered, etc.; appellees to keep possession of the mine until purchase price was fully paid, untouched and unaffected, and with this reference to the facts we now come to the law of this case.

Brief.

It is elementary that the judgment of a Court is presumed to be correct until its incorrectness is pointed out, and that he who alleges error must show it. Hence, it would seem to be sufficient if we confine this discussion strictly to the alleged errors, noticed by counsel in his brief. We are content to discuss the two assumed errors in the order he discussed them, and the question is:

"A." Does the record show that "the purposes and ends for which sale was made are inconsistent with the intention to retain a lien?" We say, No, because: 1st. Inferences and presumption from facts and circumstances cannot be allowed to prevail against the agreement of parties. The contract of August 18, 1887, between Haldeman and appellees, provided that the appellees should have and retain possession of the property, though the deeds should be recorded until the payments provided for in the contract were completed (Appellants' Brief, p. 6). 2d. Because the defendant company had full notice of the said contract. It was spread before the board, and the tripartite agreement between Haldeman, the company and Gilbert was entered into September 10, 1887, and was based upon that of August 18, 1887, between Haldeman and appellees, and was, therefore, an assent to the retention of possession by appellees, and this possession was notice of the rights of the possessors and was equal to a lien. 3d. Because there never was any intention on part of appellees to waive their right to a lien, and there was no act of theirs that waived the lien, despite their intentions.

A vendor's lien is, as counsel admits, recognized by the Courts of Colorado, and in such a case the Federal Courts will enforce such lien, and a waiver of such lien cannot be inferred from the mere fact that the parties did not contemplate the assertion of a lien in the first instance.

In respect to what acts may be held to defeat the lien, this Court, in Fisher vs. Shropshire, 147 U. S., 143, says:

"Undoubtedly a lien of the character we are considering may be defeated if the grantor or vendor do any act manifesting an intention not to rely on *the land for security;* but this must be an act substantially *inconsistent with the continued existence of the lien*, and cannot be inferred from the mere fact that the parties may not have contemplated the assertion of the lien in the first instance."

And this Court in the same case asserts that the principle upon which the lien rests is that one who gets the estate of another ought not, in conscience, to be allowed to keep it without paying the consideration.

Citing—

Story's Eq. Jur., 1219.

Chelton vs. Braiden's Administratrix, 2 Black, 458.

In Cordova vs. Hood, 17 Wall., 1, it is held by this Court that even taking a note with surety from the vendor, though usually held as evidence of an intention to waive the lien, was but a presumption, and, like all presumptions, could be overthrown by evidence. So here, if there was any act or acts that in any way evidenced any intention not to rely on the lien, the presumption arising from

such acts is met and refuted by the facts admitted in the pleadings, and shown by the testimony, that at no time did appellees ever consent to lose the possession, and every contract made, notably, that of August 18th, 1887, and that of October 5th, 1888, in express terms provided for appellees' retention of possession until final payment had been made. So, too, the deposit of deeds for delivery on payment, and the delivery of the deed under the contract of August 18th, for the sole purpose of enabling the company to register its stock, and thus enable Haldeman to raise money to pay the purchase price (Record, fol. 48), all show that the intention of parties, at least that of appellees, was to retain the lien at all times. It is noticeable, too, that not a particle of testimony was offered by the appellant that there was ever any expectation by it, or by Haldeman, that the lien should be abandoned, nor was there any evidence of McKerrell or Brown, who were parties to a contract, that appellants contend did waive the lien; that they ever construed that contract in that way; while, on the other hand, every act and deed of the appellees and their agent, as well as their declaration, were to the effect that they were claiming a lien, and they have at all times held possession of the property. The rule of law that must govern this case is well expressed in Coos Bay Wagon Co. vs. Crocke, 4 Fed. Rep., 582, as follows:

"Upon the sale of real property on credit, without collateral security, equity raises a lien thereon in favor of the vendor, as a security for the unpaid purchase money; and this lien exists whether the property is conveyed *to the purchaser or not.* The

vendee is considered the *trustee of the vendor, in respect* to the purchase money, until it is paid; and this lien continues and holds good against all subsequent purchasers, with notice that the purchase money is unpaid. Macreth vs. Symmons, 15 Ves., 329; Bayley vs. Greenleaf, 7 Wheat., 49; Chillou vs. Braiden's Admx., 2 Black, 460; Lewis vs. Hawkins, 23 Wall., 125; Gillman vs. Brown, 1 Mass., 212; Pease vs. Kelly, 3 Oregon, 417; Baum vs. Grigsby, 21 Cal., 175; Garson vs. Green, 1 Johns. Ch., 308; Champion vs. Brown, 6 Johns. Ch., 402; 1 Wash., 502–4; Adams' Eq., 126–9; Story's Eq. Jur., Sec. 1217, *et seq.;* 4 Kent, 151–4. As to the intention of the parties concerning this lien, it is to be considered that the lien is a natural equity, and arises and exists *independently of their* agreement. Neither is it waived or relinquished, unless by an *express* agreement to that effect, or conduct plainly *inconsistent with an intention to retain it*, as by taking a mortgage on the premises, or a distinct and independent security for the purchase money; and the *burden of proof* is upon the purchaser to show that the lien has been waived or relinquished. 1 Lead. Cas. Eq. n. Mackreth vs. Symmons, *supra*, 364; Gillman vs. Brown, *supra*, 213; 4 Kent, 152.

"It is not enough to say that the thought of the lien, as a security for the payment of the purchase money, was not in the minds of the parties at the time of sale; for it is in just such cases that equity, as a means of doing justice between the vendor and vendee, or the assignees of the latter, with notice, creates and enforces this lien. And, therefore, whenever the vendee or assignee seeks to hold property free from this lien, he must show that it was *intentionally relinquished by the vendor.*"

4th. Nothing is clearer than that "the object, purpose and end of the sale" on part of appellees were to obtain payment of somebody, in some way, in *cash*, for after the first optional contract in 1886, in which they offer to take $337,500 in cash and

$312,500 in stock, there is neither in the pleadings, the contract or the oral evidence any intimation or suggestion that they would take a dollar in stock, except that in the contract of August 18th there is a statement that out of the 375,000 shares, if the 65,000 pounds was paid, as agreed upon, the said shares should *all*, less 77,500 to which "Seymour was entitled," be released. But this release of all but the 77,500 shares was not to be done until "the completion of the above mentioned payments." Hence it would appear to be a great stretch of the doctrine of waiver of lien, by reason of the nature of the contracts and the purposes and ends of the sale, to hold that, although in every contract made, from first to last, the owners insist on cash payments, and they only consent to take 77,500 of stock on condition that 375,000 shares of one pound each be put up as security for the payment of 65,000 pounds in cash, and would neither take or release any of the stock till the payments in cash were complete, yet that this action indicated, or was of such a nature, as showed no lien was contemplated. We submit that every contract and every act of the owners, from first to last, indicated an intention on their part not to surrender possession or control of the property until the purchase price was paid, and certainly an intention to retain possession is an intention to claim and hold a lien.

II.

Counsel for appellant's second point is that "Other and collateral security was taken for the purchase price." This is clearly a mistaken view of the facts and the law thereof. The Court will

observe, Haldeman was a director of the company on the 18th of August, 1887, as counsel admits (Appellants' Brief, p. 12), and the contract of August 18th, which provides that the stock shall be put in the hands of Elder, as trustee, was before the company on the 10th of September, before the stock was allotted or issued, and was made the basis of the tripartite agreement of September 10, 1887, to which the company was a party. By that contract the grantee in the deed was changed from Haldeman to The Slide and Spur Gold Mine, and it procured the deeds to be registered and accepted the title, subject to the contract, that appellees should "*retain such control until the said payments are completed.*" Hence it is true, as the Court below well said (Record, fol. 135):

"Having accepted title according to its terms and paid some part of the money mentioned in the agreement, the corporation is not now in a position to deny its authority, and the agreement will be regarded as having been made by the corporation, or in its behalf, or at all events as having been ratified by it."

In the light of all the facts in this case, the situation from the 18th of August, up to and including the 10th of September, 1887 was: That Haldeman, who first bargained for the property and undertook to form a corporation to take it off his hands, had failed to pay for it, but had agreed to do so within a time easily fixed, and the company of which he and Elder were both directors, had made a contract respecting the purchase, the allotment and issue of its stock, and had procured the record of deeds to the property knowing that it had not been paid for, and knowing that the very

contract that provided for the delivery and record of the title deeds, provided that *it* could have no control over the property, but that appellee should retain such control until such payments were completed, and that by the same contract the company's stock was to be put into the hands of one of its directors as security for the completion of the contract, that called for payment in cash to the amount of 65,000 pounds sterling. The company up to that time had not paid a cent. Haldeman had not complied with his contract, and did not own a foot of the mine, and had nothing to sell. It is clear, then, that the company could not lawfully issue and deliver to Haldeman, or to any one else, the 375,000 shares, seven-eighths of its whole capital stock, without consideration, and if it had issued the stock directly to Haldeman, he could give no consideration therefore, unless it was the privilege of a purchase that he had not completed. But the fact is, there is no where any allegation that the stock was delivered to Haldeman; in fact, the allegations of the answer show it was *not* so delivered, for it says (Record, p. 20), that on the 6th day of September, 1887, "the defendant at the request of the said Haldeman issued and caused to be *delivered* to Clarence Preston Elder, as trustee, 375,000 shares of one pound each," and it then recites that these shares were then held by said Elder as security for the performance of the contract of August 18, 1887. Here, then, was a company who had title to property it had not paid for, and that knew no one had paid for, issuing and delivering seven-eighths of its stock at the request of one director, putting it into the

hands of another of its directors, the latter being designated as "trustee," and the stock to be held by him for the purpose of securing the payment of the purchase price. It is clear, then, as this Court has frequently held, that as directors of an incorporated company, both Haldeman, Elder and the other members of the board were trustees, for both stockholders and creditors of the corporation, and the capital stock was a trust fund to which creditors had a right to look for payment of this claim.

Burke vs. Smith, 16 Wall., 390.
New Aburg vs. Burke, 11 Wall., 96.
Sawyer vs. Hoag, 17 Wall., 620.

This being so, neither the company, itself much less any agent or director of it, could make use of this trust fund so as to impair the security which this trust fund gave to the creditors. Admit that the company might have sold its stock and took the mines in payment, yet it is clear it did not do that, because the stock was not issued, and *admittedly* could not have been issued under the laws of Great Britain until the deeds had been registered. Nor could it have lawfully disposed of its stock by issuing the same in payment to a party who confessedly *had* no title to the property, the company itself having the title subject to the payment of the purchase money. Nor could the company legally issue its stock to a trustee solely as security for the payment of a debt due from one person to another, even though the debt was incurred by that other for the purpose of paying for property deeded or to be deeded to the company, unless it be held that the debt was also the debt of the company. Since no corpora-

tion can, unless organized for that purpose, go into the guarantee business, so it could not, for the same reason, pledge its stock to secure another debt. But it could, no doubt, use its stock to purchase property or to secure its own debt; but such dealing and pledging of stock to secure its own debt, cannot, in the absence of some proof of intent on part of those accepting the pledge, be held even evidence of a waiver of their lien. It would be no more evidence of a waiver of the lien than would be the giving of a note for the amount. It is, in effect, but an additional security, and not a waiver of other security.

Perry on Trusts, Sec. 237.

Jones on Liens, Sec. 1074.

It is, we think, clear on the face of the transaction, that the company, knowing the property had not been paid for, knowing that the owners would insist on payment before possession could be had, and, having agreed to the retention of the property by the vendors till payments were completed, never did, and never intended to, deliver its stock to Haldeman or to Elder, in *payment* for the property, but merely to make one of its own directors its trustee, to secure the payment of a debt that, by accepting the title under the contract of August 18th, it had clearly *assumed*, and if that be so, there was no waiver of the lien of the vendors.

And that this is true, and that the stock was put up for the company's security for payment of the price, is shown by the contract of August 19, 1887, which counsel says was a "part of the contract, and the *same transaction*," of August 18, 1887 (Appellant's Brief, p. 9), for that transaction is one

between Haldeman, Elder, McKerrell and the company, as is shown by the contracts and the signatures, and Seymour and Brown, the three first named composing a majority of the Board of Directors, and the company, signing by its Secretary, this contract especially reciting that the 375,000 shares are, immediately upon the same being so issued, *to be transferred to the said Clarence Preston Elder, a Director of the company, as trustee for behoof of all concerned.*"

The rule as to notice of a lien is, that one who acquires an interest in land that *may* be affected by a vendor's lien, with notice that the money is still due on the purchase, takes it subject to such lien, though he had no knowledge that a lien was claimed.

Jones on Liens, Sec. 1083.
Ledos vs. Kupfrian, 28 N. J. Eq., 164.
Armstrong vs. Ross, 20 N. J. Eq., 109.
Brinkerhoff vs. Vansciver, 4 N. J. Eq., 251.

In cases of conveyance to the vendee, the purchase price not being paid, the vendee is held to be a trustee for the vendor.

Lewis vs. Hawkins, 23 Wall., 119.
Holroyd vs. Marshall, 10 H. of L., 191.
Bent vs. Wilson, 28 Cal., 632.
Mackreth vs. Symmons, 15 Ves., 348.
Story's Eq. Jur., 1218, *et seq.*

Apply these principles to the facts in this case. The company took title to this property September 6, 1887, under the contract of August 18th, and on September 10, 1887, the tripartite agreement between Haldeman, Gilbert and the company was reduced to writing, the vendors all the time retain-

ing possession in order to enforce payment of balance due. The relation the parties then occupied was, that the vendors were trustees for the company so far as title was concerned, and the company alone or the company and Haldeman were trustees for the vendors in respect to the purchase money. This relation had been assumed by both parties, at the request of the company, for the sole purpose of enabling the company to register and issue its stock, this fact being admitted by appellant's counsel (Brief, p. 32).

When and by what means, then, has the company or Haldeman, one or both, obtained a release from their trust? Such release could be had only by payment, or by a relinquishment and discharge therefrom by the vendors. There is no pretense of payment and no evidence whatever of any intention on part of the vendor to release them from the trust imposed. If it be said it is found in the agreement of August 18th that the title to the mine should be "registered free from all charges and incumbrances," we answer that this applied and could apply only to the state of the title, as it should be at time the deeds were tendered, and as to matters antecedent to the agreement to purchase. It did not relate to, and was not intended to affect, anything arising or growing out of the agreement to sell, or the state of the title as affected solely by the sale, so there was no waiver of the lien accruing by virtue of the sale.

III.

A vendor's lien "is," as is said by Justice Field, in Baum vs. Grigsly, 21 Cal., 177—

"A natural equity not arising from any agreement of the parties, but a creature of equity, founded upon the natural justice of allowing a party to reach the property which he has transferred, to satisfy the debt which constitutes the consideration of the transfer."

Since, then, the lien is always implied from the fact of purchase price remaining unpaid, in whole or in part, and that, too, whether conveyed by deed or only contracted for, it follows that it is preserved in all cases, unless an intention is clearly manifest that it shall not exist, and the burden of repelling the presumption of a lien is upon the vendor.

Jones on Liens, 1064.
Mackreth vs. Seymour, 15 Ves., 342.

So, in respect to the question of a waiver of the lien, since in this case the acts and contracts show an intention on the part of the directors to retain a lien by possession, and since they still retain such possession (as is shown by the record in case No. 263, which, by stipulation, is now and here to be heard), it is clearly incumbent on appellants to make a clear case of waiver of the lien, and the rule is, "if, under all the circumstances, it remains in doubt whether the lien has been waived, then the lien attaches."

Story's Eq. Jur., Sec. 1224.
Garson vs. Green, 1 Johns. Ch., 308.
Wilson vs. Lyon, 51 Ill., 169.
Dyer vs. Martin, 4 Scam., 147.
Dunton vs. Outhouse, 64 Mich., 419.
Truebody vs. Jacobson, 2 Cal., 269.
Wilkin vs. May, 69 Ala., 33.

In Redfield vs. Woodfolk, 22 How., 327, this

Court said: "A Court of Chancery regards the transfer of real property in a contract of sale and the payment of the price as correlative obligations. The one is the consideration of the other; and, one failing, leaves the other without cause." The taking of security, no matter what the security is, raises a presumption of waiver of lien *only*, and this presumption is open to rebuttal.

Cordova vs. Hood, 17 Wall., 7.

Bagley vs. Greenleaf, 7 Wheat., 50–51.

So strongly has this Court adhered to the doctrine of this natural equity, a vendor's lien, that it has held, and still holds, that the lien, and the right to enforce it, is not lost or barred by a statute of limitation which bars the *mere* debt.

Lewis vs. Hawkins, 23 Wall., 127.

Hardin vs. Boyd, 113 Wall., 765.

And it can scarcely be possible that it can hold such a lien waived by anything less than the clearest proof of such waiver.

Counsel for appellant cites Jackson vs. Stanley, 87 Ala., 270, and Islett vs. Collins, 103 Ill., 74, and 6 Ves., Jr., 752, in support of his contention that taking security *other* than the land itself, or, especially, accepting a pledge of *stock*, waives the lien. But each and every of these decisions is made in a case where some independent security was taken, by pledge of stock of some *other* company, and in all these cases, the parties supposed the stock thus pledged was ample security for the amount due on the sale, and the pledgee had resorted to the stock for payment. No case has been cited, or can be cited, where the *mere* taking the note or bond, or covenant of the purchaser

for the purchase money, has been held to waive the lien, unless in some way the rights of innocent third parties come in question.

Gilman vs. Brown, 1 Mason, 191, 214.

In case at bar, aside from the fact that this stock was deposited as security for the company itself, as well as that of the vendees, it is clear that since the company was formed to purchase the property its stock was issued alone to procure the purchase, and the company had no other means of any kind out of which to raise the money except the stock, and this pledge of stock was neither more nor less of a security than the covenant of the company. It was in no sense an independent security, nor was there anything collateral to the promise to pay for the land, and hence there could be no application of the authorities cited to the facts in the case at bar.

Again, appellant's counsel contends that appellees "are estopped from asserting a vendor lien." But we submit that the facts in this case make out no case of estoppel. Counsel assumes what is not true, viz., that in taking title under the agreement of 18th of August, the company took a title free and clear of the lien. The contract that the deed should be delivered with title free and clear of incumbrance, as we have already shown, had reference to the condition of the title up to the time when deed was delivered, and had no reference to any obligation by lien or otherwise out of the sale itself. No obligation arising or growing out of and because of the sale and deeding of the property to the company was in contemplation by the parties, nor can the words of the contract be

tortured into the support of any such position. Nor is the contention of counsel in this respect sustained to any extent whatever by the cases cited. Strong vs. Strong, 126 Ill., 301, was a case where the owner deeded lots to another, for the purpose of having that other sell or mortgage the lots, for the purpose of raising money for use of the owner, this *other* having sold the lots to a third party, who, as the Court found, had no *notice* of the former owner's alleged equity, and so the Court found the former owner had no lien. In Fisk vs. Potter, another case cited by counsel to sustain the supposed estoppel, was a case that arose between *bona fide* purchasers under a mortgage foreclosure sale, without notice of the lien, and the agent of the mortgagee who knew at time he sold his land that his principal to whom he sold would, as soon as title was in the company, mortgage all of the lands so acquired to secure money to construct and operate the road, and here the Court says it is—

"Inconsistent with good faith on his part that he should retain a secret lien under such circumstances against such persons as he *knew* already had or would advance this money on the *faith* of a clear record. Such acts are incompatible with an intent on his part of retaining a lien; they evince that he did not at the time of making the conveyance contemplate the holding of a lien. It is not honest, it is not good faith on his part that he should retain such a lien against subsequent *bona fide* holders."

And the Court quotes with approval the remarks of Chief Justice Marshall in Bagley vs. Greenleaf, 7 Wheat., 46, in support of its opinion, that—

"It would seem inconsistent with the principles

of equity and with the general spirit of our laws, that such a lien should be set up in a Court of Chancery to the exclusion of *bona fide* creditors."

The same ground is set forth for the holding in McGonigal vs. Plummer, 30 Md., 422, viz., that in case where the retention of the lien would operate to prejudice and deceive parties acting in good faith, the lien would not lie. The case of Hubbard vs. Beech, 13 Southern Rep., 364, cited, also is a case where right of an innocent third party was in question, while the only other case cited by counsel to support his position, that of Reily vs. Miami Exporting Co., was a case where several parties, all claiming different and separate liens by judgment on the same property, agreed among themselves that all the property should be sold on execution issued on one judgment, and that the purchaser at such sale should take a clear title divested of all the liens of the other judgments, and the sale under that agreement having been made and confirmed by the Court, the Exporting Company sued out execution on their judgment, sold the property on it and threatened ejectment against the parties, holding by deed on the confirmed sale; and the Court held, that the title under the sale on agreement in third party was not subject to lien of the judgment of the Exporting Company, because such lien had been expressly waived by the agreement. In case at bar nobody is defending against appellees' lien except the company itself, the original and only grantee. Nobody, either by the pleadings or proof, is shown to have any interest in it, but appellant and appellee, unless it be claimed that the "Scotch Syndicate," as counsel designates the parties to the contract of

August 19, 1887, signed by McKerrell, Elder, Brown and Fenton. But it is sufficient, as to that point, to say that the utmost that a performance of that contract could do, would be to allow the "Scotch Syndicate" to become stockholders, and it has never yet been held that a stockholder could set up any rights as against the vendor, seeking to enforce a lien upon the property sold to the company itself, and if there could be any possibility of a successful assertion of the rights of any or all the stockholders against a lien in such a case, or if they had any rights that could be asserted, appellant cannot avail itself of *their* rights to prevent the assertion of the vendor's lien against *it*, both because there are no pleadings on its part that warrant it, and because that no plea of that kind could be made by a stockholder, or by a syndicate of stockholders. The only equities in question in this case, and the only ones that could have been adjudicated by the Circuit Court, were then existing between the parties to the suit—the vendor and the vendee.

Again, counsel says (Brief, p. 42), that the estoppel in favor of the "Scotch Syndicate" and the others is avoidable in favor of the company, or the company as the representative of the stockholders. In support of this proposition, he cites but one authority—Jones vs. Bolles, 9 Wall., 364—which does not support it in the least degree, since no such question was involved in that case, it being a suit brought against Jones by a stockholder whom Jones, by fraud, had induced to take stock in the company by making false representations as to the state of the title of the company's property,

and afterwards seeking to enforce a claim that, upon his representations to complainant, had no existence, and the Court held *Jones* was estopped to set up his claim. The Board of Directors of a company is the real entity. It, and it alone, transacts the business of the company, and not one nor all of the board, nor the company, are the representatives of the stockholders. The stockholders are bound by the action of the board. All the property of the company belongs exclusively to the corporation, and not to the stockholders. All debts due are the debts of the corporation, and, in the absence of statutory liability, are not the debts of the stockholders, and the claims of the stockholder are always subordinate to those of creditors. The directors are the representatives of the corporation, the agents of the corporation, but not the agents of the stockholders, or the representatives of the stockholders, since, if they were, they could do what the stockholders might do.

Railway Co. vs. Alleton, 18 Wall., 233.

Bank of U. S. vs. Dundridge, 12 Wheat., 113.

Dana vs. Bank of U. S., 5 Watts & S., 246.

Nor does the record show in pleadings or by proof that the appellee did at any time, by word or deed, induce the appellant to take title to this property under any representation and agreement that can in the slightest degree be construed to mean that they would forego the *cash* payment set forth in the contract under which title was accepted, or that the vendor, by any contract, expressed or implied, agreed to waive or forego any right they had to such lien; and hence the very essentials of

an estoppel in favor of appellant is wholly wanting. We submit that upon reason and authority the three propositions put forth and argued by counsel in his attempt to show error in the decree herein are not sustained and that the judgment should be affirmed; but we submit further and affirmatively that the case presented by this record is one singularly clear and free from conflicting equities, in which the equity in favor of appellee is too plain to admit of dispute, and, by way of resume, we say it is the case of a party owning mining property valued at $750,000, and, having the same in market, approached by a party who, without means to purchase, expects to procure them by the formation of a company under the laws of England, for an option, which option is obtained at a fixed price, $337,500 cash and $312,500 of stock in the company to be formed. This party, in pursuance of the English method in the formation of companies to acquire titles, agrees with one Gilbert, May 16, 1887, in writing, setting forth the formation of the company to be had, the transfer of title, etc., to be made by Haldeman when title should accrue to him. On May 24, 1887, the organization of the company is completed, and Haldeman is one of the directors, but as no title was in Haldeman, nothing passed to Gilbert or the company, and that because Haldeman had failed to make the cash payment of $337,500 required by the option contract, the option contract having expired, Haldeman and appellees contract anew, in brief, to pay, in addition to what had been paid on the property, 65,000 pounds, or, in round numbers, $325,000 in cash, such sums to be paid within a time to be agreed

upon, which time expired prior to October 5, 1888. By the new contract, appellees were to take, provided the cash payment of $325,000 was made, 77,500 shares of one pound each of the capital stock, or, say, $387,500 in stock, out of 375,000 pounds in shares of one pound each, the issue of which was provided for by the contract and made possible *only* by the contract, and its execution in part by appellee, in conveying the property to the company, and procuring the deed to be recorded. But by the same contract it was provided that despite the fact of recording of deeds, the vendors should remain in possession and control of the property until the contract should be performed by Haldeman, by making the cash payments mentioned therein, and further that the deeds being registered, 375,000 shares of stock of the company of one pound each might issue, and be delivered to Clarence P. Elder, a director of the company, to be by him held as security for the performance by Haldeman, another director of the company, of his contract; and that if performance of that contract was had and the cash paid, all the stock should be released, the appellees in that case taking the 77,500 shares, which would then belong to them, and the balance of the stock being thus freed from the trust would go to the owner, which would clearly be the company, subject to any claim Haldeman might have on the stock by reason of his cash payments, if such payments were made by him; *but* if Haldeman should make default, then the appellees *might* forfeit the amounts already paid and take all the stock. But there was no agreement or understanding of any

kind that they must elect to take the stock. In the meantime, between August 18, 1887, the date of the new contract, and September 10, 1887, the deeds were recorded, September 6, 1887, and on September 10, 1887, the contract and the record of the deeds being before the company, the company issued the stock and delivered it, not to Haldeman to pay for the property, as the answer alleges, but to Elder, the director, to hold as *trustee as security* for the performance of the other directors, of Haldeman's contract, no stock having ever been issued to or delivered to Haldeman. On the same day, the contract between Gilbert and Haldeman of May 16, 1887, before referred to, was changed so as to meet the requirements of the new contract of August 18, and the company then became a party to this modification of the contract of May 16, and this modified contract, signed by Haldeman, the company, and Gilbert, refers to and recognizes the contract of August 18th, 1887, and hence recognizes the fact that, though title was then in the company, it was yet subject to the conditions of the contract under which title was had, to wit, that appellees should retain possession and control of the property until the payments mentioned therein should be made, or until default having been made, the appellees should elect to declare a forfeiture, and take the 375,000 shares. So, too, the contract of August 19th, that provides that "immediately upon the cash payment mentioned in the aforesaid agreement being received by Seymour, 75,000 shares might be transferred to the Scotch Syndicate," was known to the company and assented to by it, since it was signed by two of its Board of Directors, and

one being the President, and witnessed by Gilbert, signing himself a Secretary *pro tem.* of the company. This latter contract, referring to the contract of August 18th, and reciting that by said contract the 375,000 shares of its stock was, "*immediately upon the* same being so issued, to be transferred to the said Clarence Preston Elder, *a Director of the company, as trustee, for behoof of all concerned*," and, that being so, the company being one in whose "behoof" the trust existed, must be held to have assented to this disposition of a portion of the trust fund when all the contracts were before it, and it took action thereon on the 10th day of September, 1887. Besides that, the contract of August 18th having expired, the appellees still retaining possession, and not having elected to declare a forfeiture, on the 5th of October, 1888, made a new proposition, looking toward the payment of the balance due, but still retaining possession and control of the property and the proceeds of the same, since it nowhere provided for any payment of the proceeds to the company, except by way of retention and application to the amount still due on the purchase price. In short, the situation was and is, that the said vendors never, at any time since 1886, agreed to take any stock whatever of the company in payment or part payment for the property, except the 77,500 shares, and those only on condition that the cash payments were completed, nor have they ever elected to declare a forfeiture of amounts already paid and to take the stock that was put up, as we have seen, to secure the company, as well as vendors, on the cash payments. Nor have they, as the record clearly shows, ever at any time contemplated

any waiver of the lien or of the right to demand the cash payment, nor has the appellant ever taken the evidence of McKerrell, Elder, Haldeman, or others of its trustees, the men who, of all others, must have known what did take place and what the parties to the various contracts intended in respect to the lien. But over and above all this stands the undenied and undeniable fact that the claim of the company in this case is both unjust and absurd; unjust, because it claims the right to take property for which it has never paid, nor has any one else paid one-half the agreed price, knowing that the lowest price to be paid, as agreed upon between Haldeman and appellees, had not been met by at least $225,000, to say nothing of the 77,500 shares of stock that would have been theirs if the cash had been paid, and that, too, upon a claim disproved by the record that the vendors had waived their claim to a lien on the property and had accepted in lieu of cash seven-eighths of the stock of the company, of which the sole and only value it has was given to it by the transfer of the property itself, when, without the transfer, the stock could not have been issued at all for any purpose whatever, to any person whatever. And that claim is made also in the face of the fact that the stock was issued, when all parties knew and had assented to the issue and delivery of such stock, for the security of all parties concerned, and which the appellant asserts was made only to secure payment in cash and stock by one of the company's own directors, the security being the company's only property, and left in the hands of another of its directors. Absurd, because it is an affirmation that the vend-

ors, who at no time offered to take less than $337,500 in cash and $312,500 in the stock of the company, taking title to the mines, the capital stock at all times being the same, 400,000 shares of one pound each, and in the last contract made, insisting on 65,000 pounds, or $325,000 in cash, and 77,500 pounds in stock, and having obtained from Haldeman a contract to that effect, and the same being approved and adopted by the company in the tripartite agreement, and having obtained by the contract a right to keep possession and control of the mine till the cash payments were made, were yet so unmindful of their right to retain a lien that they voluntarily, in the same transaction, contracted practically with the same parties, and if, as counsel says, it was the same transaction, it was between the same parties, in such a way as waived not only the ordinary vendor's lien that arose out of the sale and failure to pay the purchase money, but also the possession for which they specially bargained, and that, too, upon a condition that put not a cent more in their pockets than if the contract had not been made, and which benefited only certain parties who knew all the facts and took their stock subject to all the incidents attaching to it, including vendor's right to retain possession. Absurd, too, because that by it the appellants are asking this Court to hold that appellees are now held by the interpretation of a contract so as to waive a right that the conduct of all parties, both before it was executed, at the time it was executed, and upon the 10th day of September, 1887, and the 5th day of October, 1888, show was not put upon it by either party, since the lien by possession was

recognized as appellee's right up to the time this suit was brought; and equally absurd, because that it obliges one to believe that appellees, without reason therefor and without any benefit accruing to them, consented one day to take in payment what the day before they would take no part of, except upon cash payment, and would take a portion only of stock, whose sole and only value was the property deeded to the company issuing the stock, at the same time waiving their claim for the payment in money. In conclusion, we say the record in this case and the record of case No. 263, now on hearing, both show that the right of possession of the appellees in this case was never questioned by the company until after the suit was brought, and that the company especially assented to such possession in October, 1888, by acceding to the propositions of that date and allowing parties to control property and keep the production from the mine, the parties in possession simply cabling the amount of the returns, and if there is any one rule that is thoroughly and indisputably established it is that rule of interpretation of contracts that holds that the way parties act, at and after the execution of a contract, is the best and safest exposition of what the parties intended by it. Invoking that rule, as applied to the facts herein, and noting the fact that nobody has, and if this decree cannot be affirmed, nobody ever will pay these vendors one-half what has at all times been agreed upon by all parties concerned as a fair price for the property, and, noting still further; that, if appellant can succeed in securing the claim it here and now asserts, it will take to itself title to property which, by its

action, it admitted to be worth all that was asked for it, for an amount paid by it that cannot possibly exceed four per cent of the price it expected to, and incidentally contracted, to pay, we say that if, on the facts disclosed in the record, there are any rules of law or equity that will support such a contention as the appellant here makes, then have we read and studied those rules to little purpose, and, we submit, the judgment and decree in this case should be affirmed.

Respectfully submitted,

WILLARD TELLER,

Solicitor for Appellee.

Transcripts
of
Records
1893

897

Supreme Court U. States
153 U. S.
446 — 509

LINE OF OUTCROP

No.5 No.3 No.2 No.6 No.4

OLD WORKINGS

FRANKLIN

OLD WORKINGS

OLD WORKINGS

QUINCY

Level 18

" 19

" 20

" 21

" 22

Depth 23 when litigation started

" 24

" 26

" 26

" 27

" 28

" 29

" 30

" 31

Bottom of this 32 Shaft when Pewabic was sold

" 33

" 34

" 35

" 36

" 37

Boundary between Franklin and Pewabic

Depth when litigation started

Bottom when Pewabic was sold

Boundary

1340

Level 18

19

20

21

22

23

24

25

26

27

28

29

30

31

Depth of the mine, when 32 litigation commenced

33

34

35

36

37

38

39

Depth when 40 Pewabic was sold

41

42

43

Present bottom of this No.2 Shaft.

44

45

46

47

48

49

Boundary between Quincy and Pewabic

Boundary Line between Quincy & Franklin

PEWABIC

No. 1041
Masontal.
v.
Pewabic Mining
Coetal.
} p. 148a

LONGITUDINAL SECTION

ON PLANE OF

PEWABIC AMYGDALOID

July 30/90

Scale 1" = 300 ft.

1

DUNCAN'S ADMINISTRATOR
vs.
PENNSYLVANIA RAILROAD.
132 U. S. 75, 77.

RIVER
SCHUYLKILL
ARCH
CUTHBERT
FILBERT
MARKET
JONES
ST.
23RD
22ND
21ST
20TH
19TH
18TH
17TH
16TH
15TH
BROAD
51 Feet
PROP'Y.
MARCHANT
98'
51'
FILBERT ST. EXTENSION OF BELT R.R.
YARD TRACKS
MAIN RUNNING TRACKS
BROAD ST. STATION

Scale 1"=300'

Duncan Case.
Railing or guard of dft's structure within two feet of plaintiff's building.
132 U.S. 75.77.

Width of Filbert St. 51 Feet

RIVER

SCHUYLKILL

ARCH

CUTHBERT

FILBERT

MARKET

JONES

MARCHANT

PROPTY.

FILBERT ST. EXTENSION OF PENN'A R.R.

YARD TRACKS

MAIN RUNNING TRACKS

BROAD ST. STATION

23RD

22ND

21ST

20TH

19TH

18TH

17TH

16TH

15TH

ST.

BROAD

Scale 1"=300'.